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For the love of all of our children and sharing being alive.

For children growing up in peace.

For protecting all citizens from physical and psychological abuse.

Peace comes through honesty and integrity - the antithesis of secrecy.

**This submission makes out a case that the Domestic Violence Act is presently saving about half a woman per year and costing the lives of about 15 men and their children through suicide each year. The DV Act itself is not the main culprit, it is breaches of natural justice being perpetrated by familycaught judges, while hearing cases under DV Act. These breaches of natural justice were occurring prior to the DV Act, since the onset of the familycaught. The DV Act is now the largest single vehicle for these breaches of natural justice and the subsequent deaths by driven suicide.**

**This is blood that cannot be washed off the hands of the culprits.**

**This submission makes the case that the implementation of experimental legislative programmes should be competently analysed prior to passing the legislation and must also be competently monitored in the implementation phase. This is so that if the hoped for benefits and costs are not obtained during implementation, then appropriate management responses can be quickly initiated to minimise social damage and destruction as quickly as possible. This is the central tenet of ensuring legislation quality, a practice which is so far behind world practices in NZ, that the utility and futility of attempting to develop any type of legislation in NZ must be seriously questioned. Legislation can be imported cheaply and safely.**

**Appropriate monitoring, at a cost of about \$4million, could have kept the "roadkill" deaths of the familycaught below about 20 lives, rather than the about 400 lives unnecessarily lost between 1980 and 2008. The cost per life saved would have been about \$100,000 per life extinguished unnecessarily. This is far lower cost per life than we consider justified for road safety improvements - \$2 million per life saved. In the absence of successful management of the judiciaries performance by the present chief judges of each court, then it clearly falls back onto Parliament to monitor and action the improvements required, in the performance of the judiciary. This will incidentally offer large ongoing savings in cost to Departments Courts and Justice. Associated cost savings in "legal fees" will also give considerable benefit to families.**

**The numbers of deaths of men and women is so small as to have negligible impact on politics. It may be safely assumed that the deceased people voted across all parties, so their loss will have no impact at all. Their survivors appear to suffer in silence, so they do not have any capability to lobby the political parties effectively. Apathy on the part of the wider public, allows them to ignore these issues, until it impacts personally into their lives and then they suffer in silence, like those before them. As a result of these dynamics, this is a problem which can be safely ignored for another electoral period. We do have an option, to act by our conscience, as one day these issues might impact onto ourself, or our children. The blood lost, might one day be our own or our child?**

**I ask Parliament to take constructive actions to address the problems identified.**

Deuteronomy Chapter 1 (King James Version):

**Verse 16** And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

**Verse 17** Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.

Natural justice involves "a duty lying on every one who decides anything" to "act in good faith and fairly listen to both sides". The two key principles of natural justice are that the parties be given adequate notice and opportunity to be heard and that the decision-maker be disinterested and unbiased.

Knowledge of the principles of natural justice is now well over 3,000 years old. Natural justice is based on equal **respect**. Even so, a few people keep trying to make justifications for breaching them, so they can gain personal advantage. These people want to take a quick profit and when the final costs become apparent, they are never offering to fund any recompense or damages that may be required to ameliorate the situation that they have caused. History shows that such breaches are usually the cause of problems, however well they might initially be rationalised, hidden, covered or suppressed by cruelty.

Judicial oath from Oaths and Declarations Act:

I,....., swear that I will well and truly serve Her [or His] Majesty [specify as above], Her [or His] heirs and successors, according to law, in the office of ; and I will do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill will. So help me God.

(This oath is essentially to give **respect** to all parties.

## Introduction

This submission makes the following points:

1. Low level mental illness is common among familycaught litigants.
2. Mental illness issues aren't competently handled in familycaught
3. Judges will listen to mental issues against men and will rarely listen to accusations against women.
4. Many disputes are exacerbated by litigants lack of knowledge of options available in the real world.
5. some legal workers maximise disputes for personal fees advantage, by
  - (a) misinforming their client about chances of success of their action
  - (b) under indicating what their charges will be
  - (c) mangling communications between the parties, to extend and raise the dispute
6. judges guessing decisions in the absence of evidence breaches Bill of Rights Act and natural justice.
7. breaches of natural justice undermines the integrity of judges and results in people feeling free to breach other laws as a result, in an attempt outside caught system to restore equity, leading to consequential breaches by the other party - ad infinitum through the generations.
8. many members of the public have poor understanding of what evidence must be gathered towards successful finding of facts, this can be cheaply remedied.
9. poor use of judges time by proceeding to hearing before real evidence has been produced, resulting in little value of output from judges
10. "family law" has little relevance to successfully solving family problems, as a result of being backward looking rather than being informed by research (evidence based) and failing to learn from experience attempting to deal with family problems
11. children receive suboptimal parenting due to trust and cooperation seriously damaged by adversarial disputes run by familycaught.
- 12 judges frequently place children with poorer parent, to maximise legal fees by attempting to force to parents to appeal.
- 13 Many parents, mother and father, are over-reactive during separation, whether intimate relationship or parental separation.
- 14 Injustice in DV Act and judges breaches of judicial oath drive about 10 to 15 men per year to suicide, on being initially separated from their children.
- 15 Children affected by loss of father to suicide or fathers kept away from them, suicide more frequently about 5 per year
- 16 Daughters denied access to their father get pregnant more frequently, resulting in about 20 additional teenage mothers p.a.
17. Total deaths from misapplication of DV Act from 1995 to 2008 total about 350 deaths.
18. This does not justify the additional 240 children born to teenage mothers in the same time.
- 19 We are now blindly entering the second generation of children denied access to their fathers

**When the outcomes from a programme cannot be predicted with confidence, then the action is experimental.**

To implement a programme without checking the likely outcomes, could be tantamount to manslaughter.

However, the greatest sin in experimenting on live humans, is to **not** evaluate the outcomes as they occur and to **not** actively monitor these outcomes so that if there are adverse outcomes, then management action can be taken to prevent any further adverse outcomes.

If adverse outcomes could include injury or death, then failure to act in response to adverse outcomes, is to become personally responsible for all of these consequences of the programme that you have implemented. The responsibility is higher, if the programme is applied to a population who have not consented to the treatment programme. By forcing people to participate in your experimental programme, you have taken the full responsibility for the consequences.

The DV Act has been an experiment on the lives of about 600,000 people, who were not asked for their consent, or informed that they were participating in a programme where the outcomes were uncertain ie experimental. Even worse, the actual outcomes have never been monitored for either efficacy or adverse events, so that if the outcomes were unacceptable, the experiment could be modified or stopped and help given to people suffering adverse outcomes. (One of the major adverse outcomes is suicide of men and children. No meaningful help can be given after suicide, thus programme modification to prevent further such adverse events is the only available option.)

## Recommended Solutions

The following solutions don't require any law changes, just changes of the judges.

Judges to require provision of evidence in accordance with Best Evidence "Rule"

Children's access to parents only to be cut off on real evidence of hazard to children.

Hazard to be competently estimated on the basis of actuarial risk, that is in accordance with best professional practice, as described in the book "Violent Offenders - Appraising And Managing Risk"

Mediation to be largely managed by parties, with help from Mediator selected by the parties.

(See "Parenting Plan Mediation Process Managed by Parties" for the details..)

Mediators to recommend psychological help to parties, if it appears it would facilitate negotiations

Mediators to advise parties on weight and quality of affidavit evidence provided thus far, to help parties to build up sufficient evidence to support quality and safe decision making by judge (if the judge is even required at all).

**Competent Family caught available, if the Mediation does not resolve issues between the parties, however a Family Court that is cost effective and fair.**

Child support to be negotiated at the same time as day to day care arrangements, but with backstop formula based on existing shared care formula - thus both parents basic expenses for caring for children are taken into account. At end of year there would be wash-up calculation, to correct for actual care arrangements being a bit different to the original plan.

## ***Help Litigants be Aware of their Mental Health and Impact onto Negotiating***

About 25% of the general population suffer from mild or medium level mental illness, at some stage through their life. Of all couples in separation, there is about 50% chance at least one party has a significant degree of impairment, due to low level mental illness and about 20% chance that both are affected.

Most couples do negotiate their way through these challenges, without resort to a disputed court hearing. Of couples who fight out their dispute in the familycaught, probably 80% have one partner affected and 40% have both parties significantly affected.

Whilst the diagnosable illness may lie only with one party, typically the dynamics between the two parties result from the personalities of both parties, so that it is difficult to identify where the problem has started.

In particular, it is difficult to identify what route of negotiation is most likely to offer an agreement which will be constructive and survive the rigours of time in the real world. I raise these issues, not to lead to placing blame, but to lead to both parties taking sensible responsibility for their own actions, in the past and in the future.

In addition to mental health issues, the reporting would cover issues relevant to their negotiating styles, in particular their reactivity. When people understand their own styles better, then they can manage their own negotiations with much less stress and are less likely to overreact to the negotiation process. This better handling of the stresses of negotiation, makes the process more win-win, than the present adversarial "winner takes all and fuck the loser" style of present legal workers and familycaught. This approach should reduce to almost zero the present parent suicides (sometimes associated with murder too) and then the later suicides of affected children. If this suggestion was implemented in 1995 to 2008, then about 350 lives would have been saved and parents would have saved about \$800 million in legal charges and the Government a further \$300 million in legal aid assistance.

If the parties receive some simple feedback about their mental status, they can receive some advice about how to negotiate more effectively. For some, this should help them to protect their own situation, from their own limitations. Simple psychometric tests and reports can easily be programmed into a computer. Thus the majority of litigants could be satisfied by low cost computer generated reports, for both parties. If one litigant wished to dispute this low cost report on them self, or the other party, then they would have to (at least partially) contribute to the cost of psychologist reports being obtained on both parties and on their negotiating styles.

In particular, judges hearing cases brought under the existing DV Act 1995 grossly over-react to 90% of cases brought before them, in other words - fail to react appropriately and wisely. When one or both litigants also has a fast acting over-reactive personality, the outcome tends to be extremely destructive and quite unnecessarily so. (Hence the accusation that the familycaught are merely relationship vandals.) Suicide - a permanent solution, to a temporary problem.

Children of parents who have suicided are at a much increased risk of suicide themselves. Whilst the extreme pressure of adversarial legal disputes improves the profitability for legal workers, it certainly does not serve the long term interests of the children or the parties.

A more constructive way of handling these cases, would be to make sure that the familycaught wisely uses the range of outcomes that it has available and thus reacts **appropriately** and **constructively** to the situation before it. At present it avoids doing this, as it is responding to the financial conflict of interest between itself and the parties.

Anyone who has sat for 5 days through a "2 day hearing" and seen the resulting legal bills, will understand what I am talking about! It is oftened miscalled the "paramount interests of the children", more truthfully referred to as the "paramount interests of the legal workers".

## ***Responsibility and Teaching How to Carry Responsibility***

In most instances, people associated with the case may feel that one party is obviously "to blame", but these quick assessments are frequently more based on personal liking at first meeting, than on a careful analysis of how responsibility should be carried.

Responsibility lies for the positive achievements, as well as the obvious problems and it is in the net, that the responsibility must be carried, if this couple are to make the best of life, either together or separated. It is only through shared responsibility, that they can cooperate to handle life's surprises and benefits. It is only through honest communication and trust that they can negotiate through the twists and turns of the somewhat unknown future.

Many disputes flare through limited negotiating skills:

- lack of patience, for working through negotiation
- lack of trust that the other party will follow through and honour any agreement made
- lack of world knowledge to find workable options available to the couple
- lack of knowledge about resolution of problems as they arise
- lack of faith that the agreement will be enforced within a workable time at an affordable cost

There is little point in negotiating agreements, if the parties cannot have confidence that the agreement can be enforced.

The present familycaught judges have a long earned reputation for being extremely reluctant to enforce familycaught orders that they have made. A major factor is that most of these orders are of too low quality to be able to be enforced, or have been agreed without any means of successful enforcement being built in at the time the consent agreement was made.

Whilst this approach allows the familycaught legal workers to extort the maximum cash from the parents over time, it doesn't serve the interests of either children or parents. All employees of familycaught are in the conflict of interest, that they can take more income if the system is unpredictable and unreliable, through delivering the lowest quality of service and performance and offering only ineffectual and inefficient enforcement.

The familycaught also reliably offers a lack of effective international cooperation and ineffectual international enforcement of orders.

To the extent that Mediators and familycaught judges can teach responsibility to the parties, they would be reducing the future need for recourse to the familycaught.

As the Mediators would be paid by the parties, the parties could manage the conflict of interest faced by the Mediator.

If the judges were paid and chosen by the parties, their conflict of interest about serving the parties would be able to be managed, by the parties selecting a judge that has a reputation for skill and wisdom and value for money, with recourse to hiring a different judge, if they felt the need arising.

As it becomes apparent that one (or possibly both parties) cannot or will not carry responsibility for their actions, then they must be given less ability to make decisions where they have shown they will not accept responsibility. It is important to keep people within their level of competence, to accept responsibility for their actions.

If this is not done by judges, then the parenting that will be delivered to the affected children is impoverished and damaged.

Unfortunately a classical example of failure of familycaught judges to apply these principles of responsibility is given in the Jaydon Hedley kidnap case. In addition to damaging the child's upbringing, huge amounts of the father's money was wasted by ongoing litigation, where the legal workers simply milked the parents for cash, whilst delivering negative value for their performances.

Responsibility is extremely important, for protecting children in the real world.

If "judges" cannot apply principles of responsibility, then they are valueless in every sense.

While parents cannot manage the conflict of interest, about legal workers and judges serving their family's interests, then the legal system will never be able to deliver good quality decisions cost effectively.



***Judges Making Decisions only when sufficient quality evidence has been supplied***

The present amateur familycaught "judges" (professionally trained for conveyancing and suing for damages) don't understand the consequences of the judgements that they make, when they "presume" guilty in the absence of any evidence.

The Best Evidence Rule requires that parties provide evidence of the best available quality. This "rule" is mocked in the present familycaught.

When "judges" allow cases to proceed, without any evidence at all being supplied, in clear breach of the Best Evidence Rule and then also presume guilty, they are creating an obvious breach of natural justice.

**Judicial oath**

The current judicial oath from Oaths and Declarations Act:

I,....., swear that I will well and truly serve Her Majesty Queen Elizabeth, Her heirs and successors, according to law, in the office of familycaught judge; and I will do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill will. So help me God.

Legal workers claim that in most domestic violence situations, no evidence is available. Medical evidence of assault will generally cost under \$200. Photographs are cheaper now, than they have ever been since dinosaurs and cockroaches first roamed the Earth.

In the modern age, where voice recorders can be purchased to under \$50 and cost almost nothing to operate, then it is feasible and practical for litigants to provide reasonably good quality evidence, at almost negligible cost.

By gathering evidence of acceptable quality, it is then possible to put pressure onto perpetrators to take up treatment for violent behaviours and responses, at an early stage, before violence has escalated to an injurious level. If a perpetrator can see the advantages to them, from preventing escalation, then the damage to people and relationships can be kept small. It is likely that issues around relationship negotiations will need to be addressed by both parties. Addressing issues before conflict becomes dangerous gives the best opportunity for conciliation of some form, whether it restores the intimate relationship or not, it best protects the parenting relationship.



The following extract shows that in Australia, there is pressure onto the police, to handle domestic violence incidents, according to best practice about gathering evidence. There is no excuse for the incompetent approach being followed in NZ caughts and to a lesser extent, by NZ Police.

## **Domestic Violence - Improving Police Practice NSW Australia Ombudsman's Report**

### Chapter 8. The need for an effective interagency response

#### 8.1 Elements of effective interagency responses

Our research and consultations have identified four basic elements that are fundamental to achieving a good interagency response to domestic violence:

- effective police investigations and referral to support services
- effective victim support, including court support
- effective child protection response taken when children are involved, and
- a strong focus on the perpetrator.

##### 8.1.1 Police investigation and referral

###### 8.1.1.1 Investigation

The primary role of police in relation to domestic violence is to enforce the law. They are responsible for investigating offences and protecting victims. Of necessity, much of their work is re-active in nature. Good police practice in responding to domestic violence includes:

- Appropriate and timely responses to calls for assistance to domestic violence incidents.
- Appropriate and timely intervention and action, including generally proceeding by way of arrest and charge when a domestic violence offence has occurred, and not by way of summons or court attendance notice.
- Investigation of offences, commencing with treatment of the site of the offence as a crime scene and the gathering of physical evidence (exhibits and forensic evidence), including photographing and videotaping the crime scene, photographing the victim's injuries, involvement of forensic officers or scene of crime officers, statement taking, canvassing of neighbours, family and friends.
- Obtaining additional supporting evidence, eg. medical evidence relating to the incident and to prior incidents; taped evidence of the emergency call.
- Ensuring the safety and protection of victims and family members through appropriate bail determination and by applying immediately for interim protection orders.
- Video taping or audio taping of statements of victims and records of interview with defendants, using planned, skilful interview techniques.
- Ensuring logging and continuity of exhibits.
- Conducting follow-up interviews with victims to ensure orders sought meet the specific needs of the victim and family and continue to be appropriate.
- Provision of information and notice of the requirement to attend court.
- Referral to appropriate agencies for further assistance.
- High quality brief preparation.
- Timely disclosure to the defendant/defence counsel.
- Liaison with and detailed briefing of prosecutors, including provision of details for submissions on bail and conditions of orders to be made by the court.<sup>101</sup>

###### 8.1.1.2 Referral to support services

As noted above, it is important that police have the capacity to refer victims to other services with the necessary resources and skills to provide support. From the late 1990s onward a number of LACs initiated trials involving the implementation of an arrangement that enabled police officers to refer (by consent) victims of domestic violence to local support agencies. If consent is received, police provide the victim's contact details to the agency, which then contacts the victim within an agreed timeframe. In 2003 NSW Police developed a Domestic Violence Proactive Support Service (DVPASS) Protocol and Resource Manual to guide local area commands in implementing referral arrangements. Thirty-three (33) LACs were initially involved.

## ***Psychological Abuse and Gender***

In NZ, judges generally will accept trivial incidents as demonstrating psychological abuse against women, but will not listen to claims by men that they have been abused in this way. Men may often be more susceptible to manipulation and psychological abuse, as they are typically less experienced with discussing feelings and have less time free than women for discussing relationships.

Bill of Rights Act should enable and require judges to set a similar standard, for both men and women.

Such a standard would be likely to be realistic and lead to constructive outcomes from familycaught hearings.

## ***Value of Having Integrity in familycaught process***

To change the behaviour of people who have been brought up to include a range of violent and threatening behaviours in their repertoire, it is necessary to provide an environment which rewards more positive behaviours and dis-rewards (punishes - by proper natural consequences but usually less blatantly than overt punishment).

**Thus the environmental (including Police and familycaught) response to the parties must be appropriate and have integrity.**

The DV Act 1995 was intended to do this, but in practice it often appears more to be a machine which is operated to punish one party, irrespective of whether in fact the claimed offence ever occurred.

The DV Act is easily open to abuse by the person claiming protection. Parliament assumed that judges would apply common sense when they heard cases, but in practice, the fear of being named as the judge who refused a protection order, to a person who was later murdered proves to exceed the incentive to "find facts" only on real facts!

This systematic failure to protect the legitimate interests of respondents results in the majority of respondents passing through the familycaught losing any respect that they may have had for the familycaught. This perception of the familycaught lacking integrity, tends to displace any focus of attention on reducing their own violent behaviours.

This loss of integrity can also result in reduced trust in the parenting relationship, so that the child only has access to a poorer parenting relationship than they have ever had. In many cases, this can result in an increase in violence occurring, rather than the hoped for reduction.

In fact, punishment applied when there has been no offence, that is a breach of justice, can be considered to be "psychological abuse", within the meaning of the DV Act 1995.

**The constructive approach is to evaluate fairly, the responsibility for what is happening in the parenting relationship and to respond, so as to teach the parents to be able to relate and respond constructively themselves.**

**The book "Violent Offenders appraising and managing risk" shows that when violent inmates are treated without a high level of integrity, they respond with far higher levels of violence and that programmes with high integrity can result in violent assaults dropping to below 10% within a few weeks, when operating with integrity.**

Violent Offenders appraising and managing risk TEXT.pdf  
Violent Offenders APPRAISING AND MANAGING RISK  
SECOND EDITION

By Vernon L. Quinsey, Grant T. Harris, Marnie E. Rice, Catherine A. Cormier

Whilst the book Violent Offenders Appraising and Managing Risk is discussing prisoner violence as a consequence of treatment within a programme lacking a high level of integrity, I suggest that parents who feel they have been treated by a familycaught lacking integrity are also likely to show increased violence as a predictable consequence. This will be particularly so for people who are familiar with bringing out violent reactions without having to stop to think, the very people that we would like to encourage to be less violent!

This treatment without integrity leading to increased violence, is also discussed further in the discussion of research evaluating domestic violence programmes, in this submission:

Chapter DV Act 1995 History/ International Research Developments

The Book Violent Offenders APPRAISING AND MANAGING RISK also discusses the organisational problems of administering staff responsible for implementing behavioural modification programmes in secure psychiatric hospitals and prisons. It mentions, on page 247 under the heading Institutional Violence Revisited the use of behavioural technicians rather than nurses, to have the skills to consistently and successfully apply behavioural modification by token economy.

Behavioural modification skills require consistent and very patient application of the reward/dis-reward system, closely akin to good quality parenting skills. Familycaught judges are similar to custodial prison staff, in that they are typically institutionalised, through their experiences as District Court legal workers and through until they have retired to be a judge. The problems of maintaining consistent responses to the programme attendees (in this case - the respondent to DV Act accusations) are impossible to administer, as the Principle familycaught judge has no administrative authority over his fellow judges, to measure the quality of their performances or to discipline them to obtain their compliance to standards of behaviour that the principle judge sets.

**If we look to the domain of child rearing, we obtain the similar message that discipline must be appropriate, relevant, quickly delivered and at the appropriate level - ie delivered with integrity**

The following extracts come from Toddler Taming by Paediatrician Dr. Chris Green.

#### Delayed punishment

Young children do not have a very far reaching view of life, thinking back no further than the preceding ten minutes and looking no further forward than the next ten. An hour hence, tomorrow or next week is all quite beyond their understanding. Discipline for the toddler must, therefore, be immediate. Withholding some treat tomorrow or waiting until dad comes home are both unfair and ineffective. If the toddler has to wait until father comes home, he has long forgotten his misdeed and the delayed punishment will come as a thunderbolt from the blue. This does more to frighten and confuse the child than improve his behaviour or act as a long term deterrent.

With toddlers, punish immediately and make that the end of the episode. Parents who hold a grudge, continue to fume and engage in psychological warfare for the rest of the day do great harm to their own health, upset their child and guarantee a day full of tension.

#### Behaviour modification by encouragement and rewards

Whenever the phrase 'behaviour modification' is mentioned, parents usually expect to learn some sinister technique of the type used by secret police to mould unwilling members of society to their way of thinking. Others have heard that behaviour modification has been used to train dogs, pigeons and circus animals and take exception to any suggestion that it might be used on their darling child. There is nothing startlingly new about behaviour modification, it has been around for centuries and is probably the most effective method for disciplining children. It is a technique that is part of our everyday life and is used just as often on our friends, colleagues, bank managers and other assorted members of humanity as it is on our children.

Behaviour modification is a simple technique by which one uses rewards to build up the behaviour one wishes to encourage, while ignoring the undesired, bad behaviour. By rewarding the good you hope that it will be repeated, and by trying to ignore the bad you hope that it will go away. Admittedly this is a highly simplistic view of the technique and I can hear disbelievers grumbling that it is silly and that you can't ignore bad behaviour. Let me assure you that it does work.

We know that toddlers are frequently negative and obstinate. When a stubborn, determined parent confronts a stubborn, determined toddler it is extremely unlikely that either party can win. Upset parents get wound up and disturbed by fights, so they suffer much more than the toddler, who has a short memory and will have forgotten the confrontation long before the dust has even settled. The reward based behaviour modification approach suits toddlers extremely well because it leads to far fewer fights and results in parents being much less tense.

#### Rewards not bribes

Behavioural experts quite rightly disapprove of bribing children, although rewarding our children is to be encouraged. There is a subtle difference between reward and bribery. A bribe is a form of blackmail, in which the child is told that he can only have something after he has performed a certain task. The behaviour modification reward is given when there is no talk of what will happen until after the good behaviour has appeared, and then the reward comes as an immediate and pleasing reinforcement. There are what the experts call 'soft' and 'hard' rewards. 'Soft' rewards refer to praise, fun and encouragement; 'hard' rewards are items such as sweets, smiley stamps or plastic soldiers. Most toddlers are very happy with soft rewards, particularly attention; older children are often more aware of the world monetary system and may expect hard rewards.

In summary, behaviour modification is not some dubious new technique, but a well-tried method of moulding behaviour. When this technique is used properly much can be achieved without recourse to raised voices, tantrums, force, threats or parental insanity.

**When Dr Green is discussing rewards, rather than bribes, he is meaning honest manipulation and natural consequences. Another name for this subtle concept is integrity.**

## **Research, Prior Analysis, Ethics Approval and Participant Consent**

When the outcomes cannot be predicted with confidence, then the action is experimental.

**To implement a programme without checking the likely outcomes, could be tantamount to manslaughter.**

However, the greatest sin in experimenting on live humans, is to **not** evaluate the outcomes as they occur and to **not** actively monitor these outcomes so that if there are adverse outcomes, then management action can be taken to prevent any further adverse outcomes.

**If adverse outcomes could include injury or death, then failure to act in response to adverse outcomes, is to become personally responsible for these consequences of the programme that you have implemented.** The responsibility is higher, if the programme is applied to a population who have not consented to the treatment programme. By forcing people to participate in your experimental programme, you have taken the full responsibility for the consequences.

The DV Act has been an experiment on the lives of about 600,000 people, who were not asked for their consent, or informed that they were participating in a programme where the outcomes were uncertain ie an experiment. Even worse, the actual outcomes have never been monitored for either efficacy or adverse events, so that if the outcomes were unacceptable, the experiment could be modified or stopped or help given to people suffering adverse outcomes. (One of the major adverse outcomes is suicide of men and children. No help can be given at this stage, thus programme modification to prevent further such adverse events is the only available option.)

One example is the National Women's Hospital Cervical Cancer Treatment Research. The subjects had not consented (most weren't even informed that the programme was experimental. ISBN 0-473-00664-2 Committee of Inquiry into Allegations Concerning the Treatment of Cervical Cancer at National Women's Hospital and into Other Related Matters - page 86:

In 1966 the doctrine of 'informed consent' was far from developed in New Zealand. It will be more fully discussed in later chapters.) Morally and professionally, however, the requirement to obtain consent to inclusion in a non-therapeutic trial had been clearly stated in the Nuremberg Code of 1947, which said:

"The voluntary consent of the human subject is absolutely essential."

In 1964 a draft Code of Ethics on Human Experimentation was accepted at a meeting of the World Medical Association in Helsinki. It is now known as the 1964 Helsinki Declaration. Where the research is clinical research combined with professional care (a therapeutic clinical trial), the Helsinki Declaration stipulated:

"1 If at all possible, consistent with patient psychology, the doctor should obtain the patient's freely given consent after the patient has been given a full explanation."

In the case of the DV Act 1995, the outcomes were not fully investigated, but were assumed as an "article of faith". Breaches of natural justice are well known to be extremely stressful and have a very high emotional impact, even for example, when related to theft charges or tax payments. When the issues relate to losing access to the person's own children, on the basis of guess/decisions made without submission of Best Evidence to the judge, then it should be able to be foreseen that possible outcomes include parental alienation and even suicide.

Another example of a programme being implemented without a competent investigation of the possible outcomes and starting the programme without ethical approval and without consent from forced participants, is the 1980 cutting off of Auckland region prisoner's access to psychiatric treatment. This is mentioned in Justice Dept "Explaining patterns of Suicide 2005" on page 86 (Skegg and Cox 1991a). This followed on from hospital staff refusing to allow admission of psychiatric prisoners into public hospital, due to the inability to manage violent prisoners risks to staff and other patients. Psychiatric staff refused to provide treatment within the Auckland prisons, as again their safety could not be reasonably guaranteed.

This resulted in a 400% increase in prisoner suicides, for 4 years before the increase in prisoner suicides became so obvious that it could no longer be covered up. As a result, 11 additional suicides occurred. Some of the delay was due to the time taken to build secure premises in which to make psychiatric treatment available. As this occurred before the Cave Creek Killings (Department of Conservation - yes Conservation!), the Corrections Department was able to hide the situation. (What would be your attitude, if your son or daughter or husband or wife had committed suicide in Corrections custody, in this period?)

Gisborne Cervical Smear reading Resulted in a recall programme - re-reading of past smear samples and implementation of a quality control programme on all pathology work in NZ. The absence of monitoring of pathologist's competence resulted in allowing a pathologist with Alzheimer's Disease to keep on reading slides, when he was no longer competent, for almost a decade. This failure was only picked up, when Gisborne City showed excessive numbers of cervical cancer deaths.

## DV Act 1995 History

### ***Bristol Murder Suicide the Davison Report***

Sir Ron Davison's enquiry was scoped to investigate the adequacy of the existing domestic violence laws.

In fact he went well beyond this scope and recommended changes to the laws, that would allow judges increased discretion to restrict access of children to parents (ignoring the PC doubletalk - he essentially meant fathers) and allowing them discretion to make such decisions without any real evidence.

Although he went beyond scope, in terms of recommending changes to legislation, to answer questions about the adequacy of existing laws with respect to the Bristol case, he needed to answer questions about the real world facts of this case and whether they coincided with the familycaught judges "finding" of facts. He completely failed to address this issue.

It turned out that Christine Bristol's allegations against Alan Bristol had never gone to a familycaught hearing. Thus, the familycaught judges had never formally had an opportunity to look into these allegations. However, in accepting a consent agreement which withdrew the allegations, effectively they were accepting that there was no substance in these allegations. The judges had done this twice.

Sir Ron Davison never commented on the quality of the evidence submitted in affidavits attached to the without notice applications alleging domestic violence.

He includes in his report text from the Practice Note covering without notice applications, but he doesn't comment on whether the applications made complied with the practice note? It appears that Sir Ron Davison has not made any material checks on the veracity of Christine Bristol's allegations. For example, he could have asked her GP for medical evidence, but it seems that he chose not to do this. He simply accepted her word, against that of a dead man.

There has been a major problem with legal workers not complying with the practice note, by not supplying full and frank information and not checking that there is any substance in the allegations made. Legal workers under complaint, disclaim that it is impractical for them to carry out such checks. I have never heard of any sanctions against legal workers for these breaches, they are just too profitable to the legal profession, to punish. In failing to enforce the requirements for without notice applications, the familycaught has repeatably trashed its own integrity.

It seems that there is a real possibility that Christine Bristol was using the allegations of domestic violence as a trump card in her attempt to break up shared parenting with Alan Bristol. If so, then it would appear that she continually upped the ante, until Alan Bristol completely lost faith in the skills and integrity of the familycaught judges and decided that he would prefer to be dead, than continue participation in familycaught hearings. This decision could be seen as an over-reaction, equally it can also be seen as a rational response to the hopelessness of dealing with the familycaught, in this type of situation.

I am reviewing Sir Ron Davison's report, without access to the file and without access to the people surrounding the case.

However, even in the absence of these important factors, some useful conclusion can possibly still be drawn?

Lets consider two possibilities (of the myriad of potential scenarios):

#### Option 1

Christine Bristol's allegations were well founded.

In any case, the children were not protected by familycaught.

If so, the only possibility for improved protection would lie in quick application of drastic sanctions, as Sir Ron Davison concluded. Even so, probably 2/3 of cases would still not have DV POs, so that this legal system wouldn't provide any protection anyway.

#### Option 2

Christine Bristol's allegations were tactical, she was abusing the without notice process to trump Alan Bristol to break up the pattern of shared parenting that had already been established.

Alan Bristol had completely lost faith in the skills and integrity of the familycaught judges and reacted (over-reacted?) to Christine Bristol's perjurious legal tactics. If he perceived the situation as being completely hopeless, then his decision to end his and his children's lives may have been completely rational in this situation. .

Irrespective of the real life facts in this particular case, the importance of a familycaught process that is based on professional level skills and has integrity is underlined in blood.

Sir ron davison seems to have jumped to Option 1 above and given no consideration at all to the other possibility, even though he should have been in a position to establish the truth, even if only belatedly.

Thus, the Bristol case can be seen to give some suggestions and also some warnings, about the hazards of applying automatic sanctions, without application of human judgement or wisdom.

Sir ron davison has ignored this warning and rushed into trying to apply a legal solution, to a real world problem, where legal solutions have very limited utility.

Sir ron davison appears to have acted well outside of his areas of professional competence, in making legislative recommendations without establishing a workable expertise in the social issues involved. (Of course, a similar comment seems to be applicable to the Parliamentarians involved, they just trusted sir ron davisons advice, without carrying out any type of reality check as to his competence in all of the issues encompassed.

**A competent social scientist would have carried out a cost benefit study, which would have considered whether the system would be open to abuse and what the consequences of such abuse would be. This would have provided more useful guidance about improving the concept, before rushing to pass the legislation, in a relatively unworkable form.**

## ***International Research 1974 to 1995***

Research to 1992 showed a small positive effect of mandatory arrest reducing total violence, slightly larger than the effects from counselling.

Closer examination of these studies by 1995 showed that whilst there was a positive total effect on average, it actually tended to increase violence in a small but significant fraction of the cases. These were the cases which tended to involve the most serious violence, thus were the cases where serious injury or death were most likely to occur. This underlined that unthinking mandatory responses tended to exacerbate problems and lead to worse violence. (Mandatory outcomes also increase the potential for complainants to use the DV system to abuse their ex-partner, by subjecting them to sanctions that have not been judged by competent process to be relevant and appropriate. This is then a classical abuse of natural justice.)

This research underlined the importance of appropriate responses to incidents, based on carefully weighing all of the evidence and wisely choosing the appropriate response.

The following extract shows that arrest after domestic violence results in a small reduction in recidivism. (This is not saying that automatic prosecution and conviction without fair trial reduces recidivism.) However, it has a little greater positive effect, for perpetrators who are working and has a significant negative effect on perpetrators who are unemployed ie increased violence. As there is some correlation between unemployment and predisposition to violence, these latter are typically the people whom we are most concerned to persuade to use less violence.

A very recent perspective, arguing for appropriate and wise responses, is given by Sotirios Sarantakos DV Policies where did we go wrong and Male DV Victims. These two papers are given in the Appendix to this submission.

## **Thus a wider conclusion should be that the response to the incident should be appropriate and not an over-reaction.**

From the book: Domestic Violence Program Evaluation

### **Chapter 04 What Are the Lessons of the Police Arrest Studies?**

Joel H. Garner and Christopher D. Maxwell

Below is a short extract from Chapter 4. (The complete Chapter 4 is included in the Appendices.)

#### **INTRODUCTION**

In reviewing what is known about the effectiveness of treatment or prevention programs in the area of domestic violence, the National Academy of Sciences (Chalk & King, 1998) surveyed over 2,000 studies published between 1980 and 1996. Of these studies, the Academy identified only 114 that (1) involved an intervention designed to treat some aspect of child maltreatment, domestic violence or elder abuse, (2) used an experimental or quasi-experimental design, and (3) measured and used violence as an outcome measure. Among the roughly six percent of the published studies of sufficient methodological value to warrant consideration by the Academy were seven studies that tested the deterrent effectiveness of the police making an arrest (or issuing an arrest warrant) for misdemeanor assaults against a spouse or intimate partner. These are the "police arrest studies" reviewed in this paper.

The first of these seven studies, the Minneapolis domestic violence experiment (Sherman & Berk, 1984a), is among the most visible (Sherman & Cohn, 1989) and highly cited research articles in criminology (Cohn & Farrington, 1996). That experiment found that when suspects in misdemeanor spouse assault incidents were not arrested, the prevalence of official recorded re-offending within six months was 21%; this rate was 50% higher than the 14% re-offending rate of similarly situated suspects who were arrested.

In 1974, Lipton, Martinson, and Wilks (1975) reviewed the published research on effectiveness of rehabilitative treatments and concluded that "nothing worked." Their review was limited to treatments implemented in a correctional setting and did not include law enforcement programs like police family crisis interventions but, as a result of their very negative assessment, the ideological underpinnings for all treatment programs were shattered.

In 1979, a panel of the National Academy of Sciences (Sechrest, White, & Brown, 1979) concurred with Martinson's substantive assessment and added detailed critiques of the methodological weakness of much of the published research on rehabilitation. The Academy's methodological critiques asserted that much of the prior criminological research had used unstandardized measures of



In another highly controversial arena, Issac Ehrlich's econometric assessment supporting the deterrent effects of criminal sanctions was included in the U.S. Department of Justice's *amicus curiae* brief supporting the constitutionality of the death penalty (Bork, 1974). The resulting substantive and methodological disputes over the value of criminal justice sanctions as an effective crime control strategy were addressed in a separate report by the National Academy of Sciences (Blumstein, Cohen, & Nagin, 1978). Among other issues, this Academy's deterrence report emphasized the value of experimental designs as a means to assess the impact of changes in levels of criminal sanctions (Zimring, 1978).

These highly visible public debates over the relative effectiveness of rehabilitation and of deterrence, and the Academy's repeated critiques of the methodological weaknesses of prior research provided support for the use of stronger research designs in Federally supported research at the National Institute of Justice.

In 1980, the new Director of Research at the Police Foundation, Lawrence W. Sherman, submitted a proposal to the Crime Control Theory Program that called for a rigorous test of deterrence theory; the idea was to use an experimental design to assess the deterrent effect of arrest on the crime of spouse assault. The rest is history.

#### The Minneapolis Domestic Violence Experiment 1984

The basic history of the Minneapolis Domestic Violence Experiment is an often told story. The Minneapolis police department agreed to implement an experimental design, where one of three alternative responses to incidents of misdemeanor domestic violence-arrest, separation, or counseling, would be determined on an equal probability basis. Sherman and his colleagues collected and analyzed data from the experimental incidents, from official police records of the subsequent criminal behavior of the suspects, and from interviews with victims. The findings of this study were reported in a Police Foundation Report (Sherman & Berk, 1984a), in the New York Times Science Section (Boffey, 1983), in many electronic and print media (Sherman & Cohn, 1989) and in several peer-reviewed scientific journals (Berk & Sherman, 1988; Sherman & Berk, 1984b).

Much has been made of the methodological rigor of the Minneapolis design but two other comparisons with the prior research on police family crisis intervention programs are, we think, instructive. First, Sherman and Berk's study made victim safety, not police officer safety, the sole measure of success for alternative police responses to domestic violence. Following the Minneapolis experiment, victim safety is certainly the paramount and perhaps the only criteria for assessing the effectiveness of alternative police responses to domestic violence. Second, both reforms were based on research, were supported by NIJ, generated widely distributed reports, and received favourable media coverage.

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Gartin (1991, p. 253) reports that, despite considerable missing data problems, the "analyses reported by Sherman and Berk (1984a) are reproducible" but that the weight of the evidence "seems to indicate that there was not as much of a specific deterrent effect for arrest" as the results from the original reports seemed to suggest.

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The Minneapolis experiment is not above criticism. However, the rarely noted but actual exclusion of more than 5% of the experimental cases could as easily have compromised the rigor of this experiment as the often-noted speculation that officers who volunteered to conduct the research and helped design its protocols might have imperfectly implemented the random assignment. There is another lesson from the Minneapolis experiment. An earlier reanalysis of the Minneapolis data may have provided more reasonable expectations about how effective arrest alone would be as a treatment for reducing domestic violence. Such a reanalysis, however, requires the kind of hard work and scholarship that few commentators seem prepared to contribute, prior to publishing critical assessments of other people's scientific products.

#### The Decision to Replicate

The importance of the Minneapolis experiment stems from its test of theory, its rigorous experimental design, its visibility in the popular press, its apparent impact on policy and the fact that it was replicated. Support for replication was widespread. The original authors urged replication (Sherman & Berk, 1984b). Early praise for the study's design among criminological scholars was tempered by a preference for replication (Boffey, 1983; Lempert, 1984).

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The decision to replicate the Minneapolis experiment turned out to be easier than the decisions on how to replicate. What aspects of the Minneapolis study should be copied and what aspects should be changed? How many new sites should be implemented and how would NIJ select the departments and the researchers to implement the replications in those sites? Perhaps the most important question was, would any police department other than Minneapolis agree to randomly assigning treatments to suspects? At the time, there were few scientific or administrative examples to guide this process.

The ultimate resolution of these issues was the initiation of six new experiments, one that began in 1985 (Omaha) and five additional sites initiated in 1986. NIJ required that each replication must involve experimental comparisons of alternative police responses to misdemeanor spouse assault incidents and measure victim safety using both official police records and victim interviews (NIJ, 1985). Other aspects of the design were left to the preferences of the local teams of researchers and implementing police agencies. Seventeen law enforcement agencies competed to be part of the replication program even though this program, unlike the NIJ Police Family Crisis Intervention programs of a decade earlier, did not provide additional financial resources to the department or to participating officers. The replication effort was research, not a demonstration, program and there were no Federal subsidies to the participating departments.

The main lesson of the events from 1983, when the Minneapolis results were initially released, to 1986 is that it was actually possible to replicate the design of the Minneapolis experiment but that this effort was neither instantaneous nor easy. In fact, the program's design imposed a number of administrative burdens on the participating departments and none of the police arrest studies would have been possible without the willingness of law enforcement agencies throughout the country to participate in rigorous research examining their own behavior on an issue of considerable public controversy. Like Minneapolis, these departments had risen to Wilson's challenge to gather systematic and empirical evidence of the consequences of their actions on the victims of domestic violence.

#### The Omaha Experiments 1990

There were two police arrest experiments implemented in Omaha, Nebraska between 1986 and 1989. One of these experiments (Dunford, Huizinga, & Elliot, 1990) closely copied the design of the Minneapolis Experiment: it involved the random assignment of arrest, separation and counseling in misdemeanor domestic violence incidents. The second experiment (Dunford, 1990), implemented simultaneously with the first, involved the random assignment of an arrest warrant in misdemeanor domestic violence incidents when the offender was not present when the police arrived. The Omaha studies found (and later studies confirmed) that when probable cause existed to make an arrest, the offender was absent more than 40% of the time. The first, and perhaps most important, lesson of the Omaha experiments is that police practices can be no better than 60% effective if they are limited to treating offenders who wait for the police to arrive. Using a variety of measures, Dunford (1990) found that warrants were consistently associated with less re-offending and that in several but not all of their measures, these comparisons exceeded the traditional tests of statistical significance. Based on the partial support from the statistical tests and the consistent direction of the effects of using warrants, Dunford (1990) suggested that the use of warrants deserved further investigation.

The substantive conclusions of the Omaha offender-present experiment did not confirm the original Minneapolis findings published by Sherman and Berk (1984a). In the Omaha offender-present experiment, Dunford and his colleagues reported that arrested offenders were more likely to re-offend based on official police records and less likely to re-offend based on victim interviews. Neither of the Omaha results, however, were sufficiently large to be statistically significant and Dunford et al. (1990), concluded that arrest "neither helped nor hurt victims in terms of subsequent conflict" (p. 204).

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What lessons are to be drawn from the Minneapolis and Omaha results? The results are different but the experiments, while similar, were not conducted using the same measures or methods. For instance, in the victim interviews in Minneapolis, both violent acts and threats of violence were counted as failures and half of the re-offending instances involved threats only. In Omaha, only actual violence with injury to the victim was included in the measure of re-offending. Despite the more restrictive definition of new violence in the Omaha study, the proportion of victims that reported new violence in Omaha was over 40%; in the Minneapolis study the level of new violence reported in victim interviews was about 26%. In Omaha, Dunford and his colleagues compared treatments as randomly assigned and did not use statistical corrections for the misapplication of treatments. There are numerous other methodological differences between the two studies and it is difficult, if not impossible, from these two published works to determine whether the nature of police responses to domestic violence was different in Minneapolis and Omaha or whether some or all of the methodological differences generated the diverse results.

The publication of diverse findings is a common practice in social research but it can be disconcerting to policy makers who are trying to inform, if not base, policy on research findings. While there are methodological improvements in the Omaha offender-present study—notably researcher not police officer control of randomization and a much higher proportion of victims interviewed—both studies approach the standards for research advocated by the National Academy of Sciences. A major lesson of the Minneapolis and Omaha studies is that rarely will one social experiment, no matter how well designed and implemented, tell us very much and a second experiment, even one designed as a replication, does not add that much more knowledge. This would be true if the Omaha results were exactly the same as the Minneapolis results, but the disparate results emphasize the weakness of a scientific literature or a public policy based on one or two studies. In its wisdom, the management of NIJ had foreseen the limitations of just two police arrest studies and had found the funds and the will to initiate six replications.

The Omaha experiments reported on the prevalence of re-offending, the frequency of re-offending and the time to first new offense. The original publications on the Minneapolis experiment (Sherman & Berk, 1984a, 1984b) had reported only on the prevalence of re-offending. A 1986 National Academy of Sciences report (Blumstein, Cohen, Roth, & Visher, 1986) had encouraged the use of these alternative dimensions of criminal careers and victimization and the Omaha and other police arrest studies adopted the use of these alternative measures. In addition, Berk and Sherman (1988) reanalyzed the Minneapolis data using a survival model and continued to find statistically significant deterrent effects. Dunford and his colleagues reported that in both official records and in victim interviews some victims reported multiple new offenses and that the total number of new offenses was higher for arrested suspects than for suspects not arrested. Neither of these effects was statistically significant. In their analysis of the time to first failure, they found effects in the direction of deterrence in the victim interviews but in the other direction in the official records; neither findings were statistically significant. The lesson here is that arrest could decrease the proportion of suspects with new offenses but increase the total number of new offenses against a smaller number of victims. The use of alternative measures and data sources means that there are not just one or two but many effects from each of the police arrest studies and a serious evaluation of the effectiveness of arrest requires a clear specification of which effects are important and which are not.

Unfortunately, our theories of deterrence and our understanding of how arrest and other treatments might improve the safety of women are not sufficiently well developed to specify exactly which measure or methods are the best tests of effectiveness. This is not simply a methodological issue but a central concern for individuals concerned with policy and for individuals concerned with testing theory. For the purposes of this paper, we have generally limited our discussion to the prevalence of re-offending but our choice is based on the need for parsimony and does not reflect theoretical or policy preference.

### The Charlotte Experiment 1992

The Charlotte experiment (Hirschel & Hutchison, 1992; Hirschel, Hutchison, & Dean, 1992) followed the Minneapolis and Omaha models of testing three police actions-arrest, separation and counseling, and used official records and victim interviews to assess re-offending among randomly assigned treatments. Omaha and Minneapolis, however, were mid-sized Midwestern cities with relatively low crime and low unemployment. The racial composition of the Minneapolis sample was almost predominately White (57%) or Native American (18%). In Omaha, the sample was about 50% White and 50% African-American. Charlotte is a southern city with relatively high crime, high unemployment and the experiment there had a relatively large (70%) minority population. The evidence from Minneapolis and Omaha may be inadequate to address the effectiveness of alternative police responses in this very different context.

The published results of the Charlotte experiment were similar to those obtained in Omaha: in the official records, arrest was associated with increased re-offending and in the victim interviews, arrest was associated with reduced re-offending. In Charlotte, as in Omaha, neither of these effects were statistically significant and Hirschel and his colleagues argued that their experiment provides "no evidence that arrest is a more effective deterrent to subsequent assault" (Hirschel et al., 1992, p. 29). There are, however, two possible interpretations of the results obtained in Charlotte and in Omaha. One interpretation is that there is, in fact, no difference between arrest and other treatments. The second interpretation is that the research designs used in these studies are not capable of detecting differences that do exist. Despite the experimental design, the Omaha study had only 330 experimental cases (and 242 interviews), so the Omaha design is unlikely to be able to detect effects as big as those found in the Minneapolis study. The 686 experimental cases (and 338 interviews) in the Charlotte study meant that the analysis of official records was powerful enough to detect the kinds of effects reported in the official records in Minneapolis but not the effects reported in the 338 victim interviews.<sup>4</sup>

The results of the Minneapolis, Omaha and Charlotte studies agree on one point: there is no large or even medium sized deterrent effect for arrest. The Minneapolis results suggest that there is a small to medium sized effect; the Omaha and Charlotte studies did not find even small effects but their designs are generally not strong enough to detect modest or small effects (Cohen, 1988; Garner et al., 1995). The main lesson is this: three relatively small studies are not sufficient to answer the two central issues of this research: does arrest deter spouse assault, and, if it does, by how much?

### The Milwaukee Experiment 1992

In Milwaukee, teams of researchers and police managers, in cooperation with local domestic violence service providers, designed and implemented an experiment that obtained 1,200 experimental cases and interviews with 921 victims (Sherman, 1992; Sherman et al., 1991; Sherman et al., 1992). The results of this experiment were consistent with the results found in Omaha and Charlotte: there was no statistically significant difference in the re-offending rates in official records and in victim interviews based on whether the suspect was arrested or not. In Milwaukee, on both measures, the arrested suspects had higher rates of re-offending in both the victims interviews and official records. Because of the random assignment of treatments and the larger sample size, there is no confusion in the Milwaukee study between non-existence effects and weak designs. In fact, the statistical power of the Milwaukee study was sufficient to detect even small effects but no such effects were found.

The design of the Milwaukee experiment involved some innovative approaches to better understand the effectiveness of alternative police responses to domestic violence. First, in order to assess the underlying mechanism of how arrest might deter future violence, this experiment examined differences between on-scene arrest with a short period of incarceration and on-scene arrest with a longer period of incarceration. Using official police records and victim interviews, the study found no statistically significant differences between these two arrest treatments. Second, the Milwaukee study used a third measure of re-offending-records of police calls to the local shelter. Using this measure, the Milwaukee study found statistically significant results showing arrest associated with higher rates of re-offending (Sherman et al., 1991). While the uniqueness of this measure makes direct comparison of these results with the results from the other police arrest studies difficult, the evidence obtained from the shelter data clearly does not support the notion that arrest deters subsequent violence. Third, the Milwaukee design called for interviewing some of the arrested suspects immediately after they were arrested. While the nature of these interviews limits their utility, the idea of suspect interviews is important. In fact, deterrence theory (Maxwell, 1998; Zimring & Hawkins, 1971) posits changes in suspect behaviour but the design of the police arrest studies was to interview victims.

## The Experiments in Metro-Dade 1992

The experiment in alternative police responses to domestic violence in Dade County (Pate et al., 1991) found statistically significant deterrent effects for arrest when re-offending is measured by victim interviews; the official records also showed arrest to be associated with decreased re-offending but the effect was not statistically significant.<sup>5</sup> This was the first confirmation of the statistically significant effects observed in Minneapolis and increased the likelihood that there is a deterrent effect for arrest. With the addition of the Dade findings, we can observe that, using victim interviews, four of the five experiments had found effects in the direction of deterrence; in two of these experiments, the effects were statistically significant. Using official records, two of the five experiments had found effects in the direction of escalation and in only one experiment (Minneapolis) were these effects statistically significant. Minneapolis had established the importance of measuring the safety of victims; the emerging pattern suggests the importance of how victimization is measured, by victim interview or by police records.

There were two experiments implemented in Dade. The first was the replication of the Minneapolis experiment with just two treatments, arrest and no arrest. **The second experiment used the same incidents as the first but randomly assigned half the cases to a program of follow-up services that was already in place in Dade County. This second experiment was larger and more rigorous than the Minneapolis, Omaha and Charlotte experiments and just as rigorous as the replication experiment in Dade County.** Pate et al. (1991) report that there were no differences in the official records and in the victim interviews between those victims who had been given the follow-up police services treatment and those who had not. **The statistical power of this experiment was sufficient to warrant the conclusion that these services did not protect the victims of domestic violence. The results of this second experiment were never published and have received no attention in the voluminous literature of alternative police responses to domestic violence.** The study was not even mentioned in either of the recent National Academy of Sciences reports (Chalk & King, 1998; Crowell & Burgess, 1996), despite the fact that it meets all of the Academy's criteria for research quality. Given the extensive interest in post arrest follow-up services for victims of domestic violence, **continued inattention to the nature and results of the one true experiment on the limited ability of these services to actually help victims ignores the best available evidence and may put the safety and lives of women at unnecessary risk.**

## The Colorado Springs Experiment 1992

In the largest police arrest study ever conducted, the Colorado Springs Police Department (Berk, Campbell, Klap, & Western, 1992a; Black et al., 1991) randomly assigned 1,660 domestic violence incidents to four treatment groups-arrest, separation, on-scene counselling and post incident counselling. The results of this experiment in many ways mirror the results reported in Dade County-a statistically significant deterrent effect existed when re-offending is defined using victim interviews but the deterrent effect found in the official records was not statistically significant. The results of the Dade and Colorado Springs experiments breathed new life into the diverse findings from the police arrest studies but they did not resolve whether the weight of the available evidence favoured or opposed the deterrence argument.

The size of the Colorado Springs experiment strengthened its design but it also created numerous implementation problems for the Colorado Springs Police Department. The study's design called for interviewing all of the victims shortly after the experimental incident and at about six months after the experimental incident. Had they accomplished those goals they would have completed 3,320 interviews. In addition, the Colorado Springs study attempted to interview three fourths of the victims by phone on a biweekly schedule for up to three months. Had they accomplished that goal they would have completed another 6,225 interviews for a total of 9,545 interviews. They actually interviewed 1,350 or 84% of the victims at least once and completed a total of 6,032 interviews. The extensive interviewing, however, raises another question: did the attention and surveillance involved in the interviewing process contribute to or detract from the safety of the victims. This issue is relevant to all of the police arrest studies where the assigned treatment was not just arrest but arrest with follow-up interviews; however, the interview intensive study in Colorado Springs highlights the importance of this design feature. Ironically, prior to Maxwell (Maxwell, 1998), there were no published results based on the victim interviews from Colorado Springs.

## The Atlanta Experiment

There was a seventh police arrest study initiated in the Atlanta Police Department but, as of 1999, this project has not produced a final report to NIJ or published any findings from this research and it is unlikely that it ever will. Given the conflicting findings from the other six experiments, the evidence from Atlanta could have contributed much to the issue of the effectiveness of arrest as a response to spouse assault. Implementation failures happen, but the fact that this project did not produce an accounting of why the study was not completed means that we learned next to nothing from this \$750,000 investment. The failure of the Atlanta project, however, highlights the accomplishments of the other studies: despite innumerable obstacles, eight police arrest studies were competently and, in some aspects, expertly implemented in six jurisdictions.

The existence of diverse findings from the police arrest studies raises the central issue of this paper: how can the information in these studies best be understood. Since the publication of reports and articles on the design, implementation and findings of the six police arrest studies, several assessments of the meaning and lessons of these experiments have been produced. Four of these prior assessments warrant note.

A very different review and assessment of the police arrests studies was published in three companion articles (see: Berk, Campbell, Klap, & Western, 1992b; Pate & Hamilton, 1992; Sherman, Smith, Schmidt, & Rogan, 1992). These assessments analyzed the raw data from four (Omaha, Milwaukee, Colorado Springs and Dade County) of the six police arrest studies and found that arrest deterred employed suspects but did not deter unemployed suspects.

We argue that the effect of arrest was real but modest: reductions in subsequent aggression varied from four to 30%, depending upon the source of the data (official records or victim interviews) and the measure of re-offending (prevalence, frequency or time to failure) employed (Maxwell et al., forthcoming, 2000). We call these effects modest for several reasons. First, in three of the five tests, the effects did not reach statistical significance. Second, other effects were much larger than those for arrest. For instance, the suspect's age and prior criminal history were associated with increases in re-offending from 50 to 330%. Third, regardless of site, outcome measures, or treatment delivered, most suspects did not re-offend. Consistent with other studies (Langan & Inns, 1986), the police arrest studies have found consistent desistance from re-offending once the police have been called. Our finding is that arrested suspects desisted at higher rates than suspects who were not arrested. Lastly, we determined that the effect for arrest was modest because, even among the arrested cases, a substantial proportion of victims-on the order of 30%-reported at least one new offense and those who were re-victimized reported an annual average of more than five new incidents of aggression by their partner. However consistent the deterrent effect of arrest may be in our analysis, it is clearly not a panacea for the victims of domestic violence.

#### THE LESSONS OF THE POLICE ARREST STUDIES 1992

The police arrest studies command a unique place in criminology and in our understanding of alternative police responses to domestic violence. Beginning with the Minneapolis experiment, they changed the nature of public debate from the safety of police officers to the safety of victims and demonstrated how good research could contribute to the policies and practices of the police. These studies heralded the use of higher methodological standards for criminological research and continue to inform a central theoretical debate in criminology over the deterrent effects of legal sanctions.

These qualities are rare (to non-existent) in criminological research in general and in most investigations into the nature of domestic violence in particular. Few studies can match the methodological rigor, implementation fidelity, theoretical contribution or impact on policy of any of these studies; as a group they may be unsurpassed by any other multi-site collaborative effort in social research on crime and justice. Despite these qualities, it is unlikely that another police arrest study will ever be conducted. The policy debate on alternative police responses to domestic violence is no longer about alternatives to arrest but alternatives to what the police and other agencies should do after an arrest. Random assignment between arrest and other treatments was ethically appropriate only when policymakers agreed that they had insufficient evidence to choose among them. The police arrest studies took advantage of that unusual historical moment and experimented with the lives of over 10,000 victims and suspects (and their families). As a result, we now know far more about the nature of domestic violence and the ability of arrest to improve the safety of victims. Although the size of the deterrent effect of arrest is modest, the empirical and political support for arrest is unlikely to evaporate sufficiently to warrant new tests like the Minneapolis and replication experiments. There may be additional reviews of this research and even more reanalyses of its data, but this research program is finished collecting data and implementing experiments.

The police arrest studies were, to say the least, imperfect. Sites were selected based on the willingness of police agencies to participate, not as a representative sample. Victim interviews were preferred over suspect interviews. The measures of failure did not include a variety of psychological, employment, or quality of life indicators which may be relevant to an assessment of the overall effectiveness of arrest. The experiments did not standardize the delivery of treatments within or between sites and obtained few common measures of what the alternative police responses to domestic violence actually involved. Both official records and victim interview data collection were not always systematic, complete or accurate. The data that were collected and archived do not permit the production of the complete set of originally contemplated multi-site analyses and, of course, the findings and data from Atlanta were never published. Future research would do well to build upon the strengths of the police arrest studies and to avoid, if possible, their design and implementation limitations.

The contemporary policy discussion surrounding the appropriate societal responses to domestic violence includes numerous suggestions for mandating arrest, coordinated legal and social service responses, the use of protection orders, offender treatment programs, intensive responses to high-rate or high-risk situations, and the prosecution and incarceration of offenders. These suggestions do not appear to be derived from, nor tested by, systematic empirical research that approaches the standards proclaimed by the National Academy of Sciences and met by the police arrest studies. The current discussions and policy options appear to be driven more by the personal preferences and ideology of the currently powerful than any real evidence about the safety of victims or behaviour of suspects subjected to these plausible but untested approaches.

Decisions about alternative police responses to domestic violence need to be made every day and made without complete knowledge of the actual effectiveness of those responses. Innovation and policymaking cannot and should not wait for research findings, but we should learn from what we are doing. This is true in 1999 as it was in Minneapolis in 1981 and in Omaha, Charlotte, Colorado Springs, Dade County and Milwaukee in 1986. **The police arrest studies were possible because a small number of police managers and domestic violence reformers were prepared to invest in a long-term program of rigorous research testing their most cherished beliefs about the most effective police responses to domestic violence, while the rest of the country continued to make decisions based on the best information available. At present, millions of victims and suspects and their families are part of a grand social experiment for which it appears the commitment to and use for knowledge approximates the police family crisis intervention debacle of the 1970s more than the program of systematic social research that was the police arrest studies. Moreover, there appears to be less of a willingness among researchers and policy-makers to accept Wilson's challenge to obtain "reliable information as to the consequences of following different approaches." We fear that there is a lesson here.**

Also see: Re analysis of Minneapolis Intervention Project Thesis Nadia A Bebawy N07172003f.pdf

## ***Comments on Parliamentary Debate taken from Hansard***

There was discussion and broad agreement on the following issues:

1. Domestic violence is unacceptable
2. DV is almost exclusively man on woman or child - almost all MPs
- 3 although the bill is written to offer protection to men, only Mrs Tirikatene Sullivan and Sandra Lee saw this as necessary
4. Poorly informed use of statistics
  - a. Men Against Violence see 4000 men per year now and should see 10000 per year Elizabeth Tennet
  - b. No suspicion of Suzanne Snively's cost of domestic violence 1 to \$5 billion per year
  - c. 28% of all women are abused (by implication - seriously)
5. Robert Anderson was only MP asking for more information - so the punishment fits the crime ie appropriate  
Doug Graham also used the word "appropriate", but didn't discuss what it was in the real world or how to ensure the DV Act would deliver appropriate outcomes or why appropriate response was important.
6. If men are cut off from access to their children, this will cause some distress - Doug Graham
7. Judges will sometimes get it wrong, but implication that this risk is negligible - but no hard evidence to support this assumption, other than that he is a lawyer - Doug Graham
8. Judging applications will be difficult, especially weighing evidence- Doug Graham
9. We have to rely on judges, I have confidence in them - Doug Graham
10. Call for more women judges, people who know about families Mrs Tirikatene Sullivan (single women!!??)
11. Criticism of judge for not accepting woman's affidavit without any evidence, until the woman cried Lianne Dalziel
12. Mutual DVPOs to be restricted unless totally required Clause 16 Katherine O'Regan **why??? Good/bad???**
13. Lots of men point guns at women to instil fear Katherine O'Regan **(This is already covered by Arms Act.)**
- 14 Object of the Act is to prevent violence, more than to deter Katherine O'Regan
- 15 Act to reduce fear Jill Pettis

Chris Fletcher Third Reading DV Act:

I have had a lot of lobbying since then from people who have rung me and said quite hysterically: ``I will have my firearm taken away from me and this is just a terrible thing." I calm them by explaining that confiscation of firearms **will take place only when it can be demonstrated that a protection order is required**. In the case of a woman who has been beaten up, why should the partner be allowed to maintain his firearm?

More important, why should she have to be the one to make the decision as to whether the firearm should be taken away from him? The seizure of firearms should be blamed on the law, and not on the woman involved.

Doug Graham Third Reading DV Act:

This is a very difficult matter because parents are, as of right, normally entitled to access to their own children. But the fact is that some parents are violent and they have lost control of themselves when they have had custody of their children, and there have been some terrible tragedies. To overcome that, Parliament is now about to enact a law that will make it much more difficult for violent parents---normally the father---to have custody of or access to their own children. Indeed, a violent parent will not get access unless there is some satisfactorily supervised access arrangement and/or that person can satisfy the court that the children will be safe. So that will not be easy. No doubt it will cause some distress to parents. However, I have few qualms about that. It seems to me that if people are violent, then there must be sanctions, and that may be one of them.

It will make it difficult for the courts, because they have to try to weigh up the evidence and decide whether it is right and proper to allow access. That is not easy, and sometimes they will be wrong. It is easy to be critical after the event. We have to rely on the judges to exercise their discretion as best they can, and I have every confidence in them.

Domestic Violence Act Submission 2008 \_\_\_\_\_ by Murray Bacon \_\_\_\_\_ revision 43  
Both Chris Fletcher and Doug Graham have mixed up standards of proof - judges only have to accept the woman's word that she feels fear, even without any rational basis, to be able to impose sanctions on the man. (Although written gender neutral, the Parliamentary debate show no confusion, the DV Act was **aimed** at men, in the concrete sense that Katherine O'Regan discussed men pointing loaded guns at women.)

#### **DV Act 14 Power to make protection order**

(1) The Court may make a protection order if it is satisfied that—

- (a) The respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family, or both; and
- (b) The making of an order is necessary for the protection of the applicant, or a child of the applicant's family, or both.

.....  
(5) Without limiting the matters that the Court may consider when determining whether to make a protection order, the Court must have regard to—

- (a) The perception of the applicant, or a child of the applicant's family, or both, of the nature and seriousness of the behaviour in respect of which the application is made; and
- (b) The effect of that behaviour on the applicant, or a child of the applicant's family, or both.

The "standard of proof" for this civil hearing is "balance of probabilities". However, 5a covers "perception" and familycaught judges have **chosen to interpret** this as "fear", without having to show that there is any material reasonable basis for the claim of fear. This degenerates to - "no proof required", which is clearly not what was discussed in Parliament, before the DV Ac was passed. As a consequence, this act becomes open to abuse, leading to women being able to degenerate custody, now day to day care familycaught hearings into an Alice in Wonerland farce.

Doug Graham expressed confidence in judges ability to weigh evidence. He didn't discuss the possibility that - under public pressure from publicity surrounding murder of mothers, that judges would cave in and give DV Protection Orders without requiring any real evidence of risk to be supplied to the familycaught, the only requirement would degenerate to a statement from the woman that she felt fear.

Generally murders of mothers are given touchy feely prominence by newspapers. Murders of men by women are generally lost among murders of men by men, if they are reported at all and receive relatively little publicity. Homicides by women are usually considered as not fit to plead, whereas men usually face murder charges. Thus women's killings on children and men don't show up in murder statistics. Women who get off murder under mental discharge, don't face the long and indefinite incarceration that man murderers face. This differential encourages men to take the murder rap and women to go for mental unfitness discharge. (I believe that victims of women's homicide face the same end prospect, as victim's of men's murders, so the difference is only of academic interest. Thus, we need to look at all homicides, not just murder statistics.)



The debate was notable for people repeating what previous speakers had already said and not contributing new ideas to the debate,

Many speakers said that the earlier non-violence and non-molestation orders had been ineffective, but didn't state why. Thus, there was no discussion as to why this legislation would be successful, when the earlier legislation had not succeeded. This leaves the feeling that this legislation was fuelled by optimism and ignorance, more than by wisdom and relevant analysis.

1. The debate did not mention research and was several years out of touch with current research, resulting in arrests being seen as panacea, rather than a problematic and only effective when used in **appropriate** situations
2. No acknowledgement that fear is subjective and open to easy abuse - Act has no forms of safeguard against abuse by applicant
3. Robert Anderson and Doug Graham were the only people who talked about making sure responses were appropriate to problems, but didn't contribute to the debate as to **what would be appropriate**.
4. All discussion revolved around the Act influencing rational people. There was no discussion of the effects of this Act having no safeguards against abuse (by women - maybe with some mental illness, or even possibly by men too?) and what the impacts of this might be on not highly rational men (let alone men with some mental illness).
5. Discussion seemed to assume that any problems would reasonably quickly be rectified by the caughts, thus having no negative effects, yet they discussed DVPOs automatically becoming permanent - this is an outright contradiction.
6. There was discussion about women getting no cost no claim back legal aid, but no discussion about the costs to working men, to pay for legal defence. They looked at one side of the equation, but not at the obverse. Similarly, Doug Graham spoke of his confidence in judges, but he didn't discuss the costs to respondents to try to defend against such charges and the flow on effects on their ability to support self and their children. Although he acknowledged that judges would make mistakes, essentially he refused to acknowledge that judges would commonly make any mistakes and that their decisions could be based on no evidence at all.
- 7 There was no discussion as to the consequences to children, applicants and respondents, of the problems built into this Act.
  - a. loss of trust between parents after perjurous applications result in judges making DVPOs wrongly
  - b. loss of trust resulting in exacerbating any prior problems between the parents
  - c. legal defence costs impoverishing fathers (and some mothers) resulting in poorer support of children after the parents funds were consumed on legal bills and then failing anyway....
  - d. long term loss of access to fathers resulting in girls reaching puberty 12 to 18 months younger
  - e. girls reaching puberty younger at x3 risk of pregnancy, due to sexual relations when immature socially
  - f. boys at x5 risk of suicide and girls x3 risk, if denied access to father long term + men's suicides too

The whole Parliamentary debate, by both legal workers and other Parliamentarians, turned a very blind eye to limitations and failures by legal workers and judges. Also, to the conflicts of interests faced by legal workers and judges. Only when these conflicts of interest are competently managed, will our caught system have any hope of delivering good service, at a reasonable price, to the public.

The DV Act has generated several million dollars of additional revenue for legal workers, but has completely failed to show any significant reduction in violence to men, women or children. By inflaming disputes, it appears to have killed as many women as it has saved, increased the number of children killed (including losses by suicide) and increased the number of men killing themselves by suicide. It has also brought the caughts and legal workers into much ill repute, through the support given to women to take advantage of the familycaught's inability to see through perjury and obviously self serving refusal to prosecute blatant perjury.

**The debate considered that wrongful application of a DV PO onto a man had essentially no damage, thus these sanctions could be applied without judgement to practically all men without causing individual or social level damage to our society. This "analysis" has proven to be naive and failed to consider the obvious impact of deliberate breach of natural justice.**

**If the issues were that simple, then why not put a DV PO onto all males at birth, or even onto all citizens?**

## ***1995 Cost Benefit Analysis - prior to passing 1995 DV Act***

This cost benefit analysis has been prepared using research papers available in 1995 and present male suicide rates.

### **NZ DV Act Cost Benefit Summary**

Lives saved per year women and children only	0.67 lives per year
Lives lost as incidental road kill	-23.76 lives per year
Total lives saved	-23.09 lives per year
Total cost to Families and Government	42 \$million
Cost per life saved	-1.76782 \$million per life saved

#### **An expenditure of \$1.76 million per life LOST!!!!**

If the number of suicides was underestimated, then the cost per life lost would be a little lower.

This data shows that familycaught isn't even efficient as a killing machine!

For comparison, road safety projects are authorised for expenditure up to +\$2 million per life saved.

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	DV Act - Lives Saved Per Year												
2	Summary:												
3	Reference: Relationship between homicide and mental illness in NZ												
4	This data includes men and women domestic homicide victims												
5	This reference does not allow homicides before and after 1995 to be totalled separately.												
6													
7	1988 to 2000 ie 12 years				Number	per year							
8	partner past or present				117	9.75							
9	Family member				132	11							
10	total domestic homicide				249	20.75							
11													
12	total homicide				985	82.0833							
13													
14													
15	Robertson Neville Waikato Law School DV cutting edge ALL text poor pictures												
16	This reference addresses only women and children victims of domestic violence.												
17	Neville Robertson, Ruth Busch, Radha D'Souza, Fiona Lam Sheung,												
18	Reynu Anand, Roma Balzer, Ariana Simpson and Dulcie Paina												
19	Commissioned by the Ministry of Women's Affairs												
20	AffairsAugust 2007												
21	Dedication on pages 3 to 8												
22	Dedicated to the 212 women and children who have died in domestic violence homicides												
23	since the enactment of the Domestic Violence Act 19951.												
24													
25													
26													
27													
28	page 3	1995		4	5							total	
29	page 3	1997 and 1996 too		10	11			total w+c	3 year	5 year		first 6	
30	page 3	1998		11	11			per year	moving a	moving		years	
31	page 4	1999		5	10			9	17.33	average		106	
32	page 4	2000		9	10			21	19.33				
33	page 5	2001		10	10			22	18.67	17.2		second 6	
34	page 5	2002		8	9			15	18.00	19.4		years	
35	page 6	2003		6	7			17	18.67	18.6		102	
36	page 6	2004		5	14			13	16.67	16.8			
37	page 7	2005		18	5			19	16.33	17.6			
38	page 7	2006		9	12			23	18.33	18.4			
39	page 8	2007		6	3			21	21.00	18.6			
40													
41													
42	totals				101	107	208						
43													
44	Women+Children domestic homicides					17.3333							
45													
46	The 3 year moving average data shows that the DV Act hasn't resulted in any significant downward												
47	trend in womens and children's domestic murders												
48													
49	Estimating lives saved by DV Act:												
50	If we assume the long term rate of homicide is constant, then we can take the difference between homicides in 6 years												
51	before DV Act was passed and subtract homicides in 6 years after DV Act was passed, as being the numbers of lives saved.												
52	(More exactly, the homicide rate was slowly increasing, through the 2 decades before the DV Act was passed, so the												
53	estimation procedure above will tend to slightly underestimate the lives saved. In any case, the number of lives saved												
54	per year is a very small figure, say under 1.5 per year?)												
55													
56	Womens and childrens homicides in 6 years 1995 to 2001								106				
57	Womens and childrens homicides in 6 years 2002 to 2007								102				
58													
59	Lives saved in 5 years since introduction of DV Act:								4				
60	Lives saved per year since introduction of DV Act:								0.67				
61													
62	The maximum number of womens and childrens lives that could have been saved was about 17 lives per year.												
63	Thus the reduction in homicides is not statistically significant, particularly when compared to the												
64	draconian measures implemented in the hope of obtaining a reduction in domestic murders.												
65	This is especially so, when it the breaches of natural justice were expected to save large numbers of lives												
66													
67	Robertsons data appears to be consistent with the Justice Department data,												
68	but accuracy cannot be precisely checked, due to the incomparable basis. (W+C versus W+M+C)												
69													

	A	B	C	D	E	F	G	H	I	J	K	L	M
70	<b>Reference: Relationship between homicide and mental illness in NZ</b>												
71	This data includes men and women domestic homicide victims												
72	This reference takes an extremely narrow definition of Serious Mental Illness (SMI).												
73	It defines SMI as legally unfit to plead, thus is much narrower than either a layman's definition, or a medical practitioner's definition.												
74	If the latter definition is used (see 1999 Prevalence of Psychiatric Disorders among NZ Inmates)												
75	then over 80% would be considered to have SMI (probably 100%).												
76													
77													
78													
79	Table 10. Victim characteristics of mentally normal and mentally abnormal homicide, 1988 to 2000												
80	Characteristics	Victims of mentally normal				Victims of mentally abnormal							
81	of victim	offenders (n = 842)				offenders (n = 73)							
82		n	%			n	%						
83	Gender												
84	Male	317	38	32	44								
85	Female	189	22	29	40								
86	Unknown	336	40	12	16								
87													
88	Age												
89	0 - 9	49	6	15	21								
90	10 - 19	55	7	2	3								
91	20-29	146	17	3	4								
92	30-39	98	12	5	7								
93	40-49	62	7	11	15								
94	50-59	42	5	5	7								
95	60-69	44	5	12	16								
96	Unknown	346	41	20	27								
97													
98	Relationship to offender							Total					
99	Partner - past or present	105	12	12	16			117					
100	Family member	89	10	43	58			132					
101	Friend	27	3	3	4			30					
102	Acquaintance	179	20	14	19			193					
103	Stranger	82	9	2	3			84					
104	Unknown	456	50	0	0			456					
105	Total	911	100	74	100			985					
106													
107													
108	Also see:												
109	1999 Prevalence of Psychiatric Disorders among New Zealand Inmates prisoners justice department												

	A	B	C	D	E	F	G	H	I	J
1	<b>DV Act Social Costs - Suicide Risk Calculations</b>									
2	Total lives lost per year=	23.76	men and children		per year					
3	Number of divorces per year				10000					
4	Number of divorces per year involving children per year				7000					
5	Number of children involved in divorces per year				14000					
6	Number of defacto separations per year				5000					
7	Number of defacto separations per year involving children per year				4000					
8	Number of children involved in defacto separations per year				10000					
9										
10	DVPOs issues per year, without notice				4000	familycaught website data				
11	Assumed justified DVPOs per year				1000	MCB estimate based on NZ Hospitals discharges data				
12	Assumed UNjustified DVPOs per year				3000	calculated from above				
13	Total number of separations involving children				11000					
14	<b>Thus the familycaught is claiming that there is dangerous violence in 27% of all separations???????</b>									
15	<b>This figure sounds absolutely incredible?????</b>									
16						0.273				
17	numbers of children deprived of access to their father, by him departing permanently from NZ to escape Child Support Act / COC Act abuse									
18					500	?????				
19	This factor has been ignored in these cost benefit calculations, it is additional to DV PO deprivation.									
20	children per separation				2	MCB guesstimate				
21	numbers of children wrongly deprived of access to their father by abuse of DV Act									
22	per year					6000	=F12*F20			
23										
24	<b>Estimated suicide rates</b>									
25	<b>Fathers suicide rate when deprived access to their children</b>						0.005	per separation		
26	<b>by device of obvious "in your face breach of natural justice"</b>							MCB guesstimate		
27	<b>by perjuring mother of children and familycaught judge.</b>									
28										
29	Number of men committing suicide during separation per year,					15	=F12*G25	men/year		
30	consequent to wrongfull loss of access to their children									
31										
32	<b>Table 2: Suicide death rates, by five-year age group and sex, 2004</b>									
33	from NZ Suicide Facts 2004-2005 data									
34	Total number of suicides 15 to 34 years each year in NZ									
35				male	male	female	female			
36	rate per 100,000 per year			number	rate	number	rate			
37	5 to 9 year old suicide			0	—	0	—			
38	10 to 14 year old suicide			4	—	2	—			
39	15 to 19 year old suicide			33	21.4	16	10.9			
40	20 to 24 year old suicide			49	33.6	14	10			
41	25 to 29 year old suicide			44	35.5	6	4.7			
42	30 to 34 year old suicide			31	22.1	13	8.5			
43	35 to 39 year old suicide			44	30.1	13	8.3			
44	40 to 44 year old suicide			39	25.1	7	4.3			
45										
46	Average male + female rate 5 to 24 years				9.488	=(SUM(E37:E40)+SUM(G37:G40))/8				
47	Average male + female rate 5 to 34 years				12.225	=(SUM(E37:E42)+SUM(G37:G42))/12				
48	Average male + female rate 15 to 44 years				17.875	=(SUM(E39:E44)+SUM(G39:G44))/12				
49										

	A	B	C	D	E	F	G	H	I	J	
50	<b>Children's suicides following from father suicide due to wrongfull DVPO:</b>										
51	This steady state calculation assumes that DV Act has always been in place, actually only 15 years.										
52	Thus the present number of excess suicides is lower and will trend up to these figures, through the next 15 years.										
53	At present 2008 we are only half way up to the steady state figure										
54	fathers suicide per year, from above calculations					15	per year	=F29			
55	children's (male + female averaged) rate 5 to 24 years					9.488	per 100,000	per year	=E46		
56	increase factor for father absence due to father's suicide					50	MCB guestimate from x5 for simple father absence				
57	years of exposure to elevated risk factor after DVPO					20	MCB estimate from discussions with counsellors				
58			<b>1.42 suicides per year</b>			=F54*F55/100000*F56*F57					
59	Years of exposure - this assumes that after 20 years the child has fully emotionally recovered from impact of father's suicide.										
60	These suicides will be age distributed through the 5 to say 25 years age statistics ie mainly show up in young adult suicide statistics.										
61	Thus by going to the trouble to have competent familycaught hearings, we could avoid destroying 1 child and 15 men per year.										
62											
63	<b>Children's suicides following from father absence due to wrongfull DVPO:</b>										
64	Wrongfull "children's" suicides per year, most will suicide as adults and then show up in adult suicide statistics.										
65	number of men wrongfully forcefully absented by DVPO per year					3000	men	=F12			
66	number of children per father					2		=F20			
67	children's (male + female averaged) rate 5 to 34 years					12.225	per 100,000	per year	=E47		
68	increase factor for father absence under extreme conflict					5	USA DHHS NCHS Survey on Child Health				
69	years to lift DVPO wrongfully issued					2	MCB estimate from discussions with affected fathers				
70			<b>7.34 suicides per year</b>			=F56*F57*F58/100000*F59*F60					
71	These suicides will be age distributed through the 0 to say 15 years age statistics ie mainly show up in child suicide statistics.										
72	This calculation assumes that risk extinguishes on allowing the child to access father again.										
73	This probably underestimates the suicide risk and there is probably a small increased risk factor long after access is allowed again.										
74	Thus by going to the trouble to have competent familycaught hearings, we could avoid crushing 15 children and 15 men per year.										
75	This would not involve any increase in expenditure, just appointing relevantly qualified people to work as familycaught judges.										
76											
77	<b>Summary</b>					suicides per year					
78	Fathers suicides when deprived access to their children					15	=F54				
79	Children's suicides following from father suicide due to wrongfull DVPO:					1.42	=C58				
80	Children's suicides following from father absence due to wrongfull DVPO:					7.34	=C70				
81	Total suicides per year after wrongful restriction of access					23.76	=SUM(G78:G80)				
82	<b>NOTES:</b>										
83	There will probably be some other women's consequential suicides too, later girlfriends and mothers.										
84	Very similar factors applied for CYFs child removals, although I believe that the elevated risk factors are higher.										
85	--Source: U.S. Department of Health and Human Services. National Center for Health Statistics. <b>Survey on Child Health</b> . Washington, DC, 1993										

	A	B	C	D	E	F	G	H
1	<b>Pigs Trough - Users</b>							
2							Private	Government
3	<b>Legal workers - DV PO</b>						\$million/year	\$million/year
4	number issued per year					4000		legal aid
5	fraction paying a legal worker for DV PO attempted defense					0.15		
6	average legal worker charge for DV PO					4000	2.4	
7								
8	fraction paying a legal worker for DV PO attempted defense					0.15		
9	average legal worker charge for DV PO					4000		2.4
10								
11								
12	fraction paying a legal worker for criminal attempted defense					0.1		
13	average legal worker charge for criminal charges					3000	1.2	
14								
15	fraction paying a legal worker for criminal attempted defense					0.2		
16	average legal worker charge for criminal charges					3000		2.4
17								
18								
19								
20	fraction paying legal worker for relationship property					0.4		
21	average legal worker charge					4000	6.4	
22								
23	fraction paying legal worker for relationship property					0.1		
24	average legal worker charge					4000		1.6
25								
26								
27	<b>Real Estate Agent</b>							
28	extra house sales per year					2400		
29	Real Estate Agent fees for house breakup sale					10000	24	
30								
31								
32	<b>Judges</b>							
33	number of additional judges positions due to perjured DVPO&criminal					40		
34	average familycaught judge wages					280000		11.2
35								
36								
37	<b>DV Anger Management Course Providers</b>							
38	number DV PO issued per year					4000		
39	average Anger management course charge					600		2.4
40								
41								
42								
43		Total cost to families					34	
44		Total cost to Government						20
45								
46								
47								
48		Total funds transferred away from families and Government						54
49								

## ***Evaluate the performance of the legislation during first years in operation***

This brief summary of Justice Department reports shows that Government analysis of the operation of the DV Act is predicated on a scientifically untested assumption that the familycaught process always leads to correctly "finding facts" and that the "judges" decisions are appropriate to the facts of the situation. **This submission challenges exactl this assumption.**

It is difficult to evaluate these issues, however it is well within the resources of Government to perform such an evaluation. Given that the DV Act has huge potential for abuse by applicants, it seems inappropriate to assume that the familycaught part of the process is functioning well, when there have been ongoing public protests from men's groups since before the DV Act was passed by parliament. This report suggests that the DV Act processes in familycaught are annually costing men and children's lives to the tune of about \$30 million and largely wasting a further \$20 million in family and Government resources for "legal services" delivering no value to the NZ public. The problems with quality and value for money of legal services apply to all caughts within NZ and to much of the wider group of legal workers in NZ.

### **1995 domestic violence Act process evaluation**

The writers of thids report cleary consider that respondents are always male. The Justice Department staff commissioning this report must have communicated the the DV Act is targetted only AT males, rather than attempting to protect any person fearing for their safety.

Extract from page 91:

Providers send a notice of non-attendance to the court immediately a respondent fails to attend a session of the programme without having first had the absence approved. The first step taken by court staff is to send a notice to the respondent asking **him** to contact the court or the programme provider immediately. If the respondent restarts the programme at this point no further action is required. If **he** does not, the letter is usually followed by a summons to the court where the judge considers the matter and will usually direct the respondent back to the programme, or may discharge the direction to attend. In the file study, of the 220 that were referred to programmes and not listed as excused, only 43 (approximately 20%) were summonsed to appear before the court.

The entirety of this report discusses complainat's concerns. There is no investigation of issues relating to breaches of natural justice by complainants using the familycaught process to abuse the respondent. The rresearch has proceeded on the basis of accepting complainants evidence and totally rejecting the respondent's perspective. Thus there has been no effort to check whether the real life facts matched what happened in he familycaught process. Thus, the appropriateness of the familycaught response could not be checked, as it was simply assumed to be correct, without any checking in the real world.

### **1995 Family Violence Conference Victoria**

### **1996 Domestic violence legislation adams kearns**

This paper does not mention the problems with evidence, where judges are free to accept uncorroborated evidence from a woman complainant and may accept that assault has ocured even without any provision of evidence that there has been some degree of injury. This paper does not mention the Best Rule of evidence, which is also ignored by many NZ "judges".

### **1996\_11 susan snivelys Womens Refuge costing report text**

Published by the National Collective of Independent Women's Refuges Incorporated

The following two documents review Susan Snively's Refuge Costing Report:

1994 October Susan Snively costs of family violence review by Dr Felicity Goodyear-Smith from NZ Medical Journal

1994 Snively Suzanne The New Zealand Economic Cost of Family Violence critique of by Stuart Birks

### **1999 May Domestic violence and Child Access in New Zealand report justice**

This report did consider the perspectives of both parents to supervised access. There was no consideration of breaches of natural justice in the familycaught process leading up to decisions about day to day care and access, as the scope had been defined narrowly to exclude (avoid) these issues.

### **2001\_2 Women living without violence evaluation of programmes for adult protected persons under 1995 DV Act**



## Illustration of Hazards From Failing to Monitor a New Programme Properly - Prison Suicides

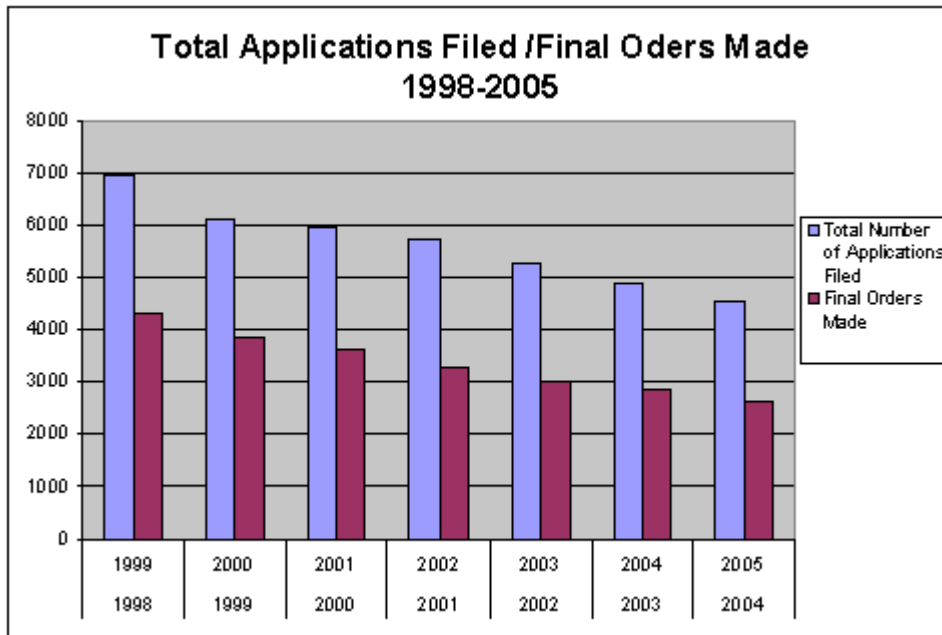
	A	B	C	D	E	F	G	H	I
1	NZ Prisons Suicide Experiment 1984 to 1988								
2	This example is included to show the tradeoffs between spending money to save lives and								
3	why it is important to monitor the performance of new programmes to see that they are working as intended.								
4									
5	If you don't know what the outcome will be, then you are doing an experiment.								
6	If you don't monitor the progress of the experiment, then you are unable to stop the experiment, if some outcomes are adverse								
7	If it can be shown that you could have detected outcomes by competent monitoring,								
8	then you take full responsibility for the preventable adverse outcomes.								
9									
10									
11	Suicide Prevention in NZ Prisons 1969 to 1994 (25 years) NZ Department of Justice								
12	page 11 Implies 51 suicides in 10 years								
13	page 18 - 1 suicide in 1993 lowest figure since 1981								
14	and 10 in 1994 highest ever shows high degree of fluctuation in annual statistics								
15	page 21 76 suicides from 1969 to 1994								
16	page 68	Figure 8				suicides 1969 to 1994			
17		selected prisons only							
18		Auckland West Prison			1				
19		Auckland East Prison			18				
20		Waikeria Prison			11				
21		Mount Eden Prison			21				
22		Total from 1969 to 1994			51				
23									
24	Page 23 paragraph 77								
25		Experiment to measure cost effectiveness of psychiatric help to prisoners.							
26		Criteria tightened under which Auckland prisoners allowed access to psychiatric help							
27		Experimental design ABA							
28		A prisoners given access to psychiatric treatment 1968 to 1983,							
29		B access restricted from 1984 to 1987 and							
30		A then given access again from 1988 to 1994							
31		Ethical approval was not shown in any of the Justice Reports.							
32		Prisoner consent was not shown or indicated in any of the Justice Reports.							
33									
34									
35	Experimental Phase	start	end	duration	years	suicides recorded	suicide/year in period		
36	A	1968	1983	16	16	2	0.125	=F36/E36	
37	B	1984	1987	4	4	13	3.250	=F37/E37	
38	A	1988	1994	7	7	6	0.857	=F38/E38	
39									
40	Base A suicide rate average 1968 to 1983 plus 1988 to 1994 - suicide rate								
41					23	8	0.348	=F41/E41	
42	B Experimental treatment - withheld access to psychiatric treatment - suicide rate								
43					4	13	3.250	=G37	
44									
45	Expected number of suicides through test period, if treatment not withheld.								
46	Excess deaths due to withholding access to psychiatric treatment								
47	Increase factor in suicide rate as a result of withholding treatment								
48						ie 834% increase in suicides			
49	Expected number of suicides, if access to treatment restored after 6 months								
50	Expected number of suicides, if access to treatment restored after 1 years								
51	Expected number of suicides, if access to treatment restored after 2 years								
52	Looking at the numbers above, it would not really be possible, at 6 months to conclude that the number of suicides								
53	was significantly higher, due to withholding access to psychiatric treatment. The number of suicides might								
54	just be a cluster of suicides. However, after 1 year and 3 excess suicides, it starts to be clear that								
55	providing psychiatric treatment is important for prisoner wellbeing in death and life terms, let alone								
56	humanitarian issues.								
57									

	A	B	C	D	E	F	G	H	I
58	This study generated statistically significant experimental data, that could be used to justify spending on psychiatrist's								
59	salaries and secure treatment facilities for making treatment available to dangerous incarcerated prisoners.								
60									
61	As an example of the costs of delaying monitoring of an experiment on live human beings,								
62	this experiment could have been stopped after 2 years								
63	and reduced the roadkill element from 11.61 additional suicides down to about 6.50								
64	Thus the delayed management reaction resulted in the unnecessary crushing of about 6.5 prisoners lives.								
65	This delayed management reaction will have saved about 4 manyears of psychiatrist's employment								
66	plus about 35 prisoner years of incarceration costs.								
67					cost per year	manyears	total saving		
68		psychiatrist's employment			250000	4	1000000		
69		prisoner incarceration cost			90000	35	3150000		
70		cost of preparing ethical approval application					10000		
71		experimental management saving, by not monitoring progress					20000		
72							4180000		
73	cost saving per life sacrificed by delayed management decision					836000.00			
74									
75	<b>The net saving is about \$4.2 million in wages at a cost of 5 lives ie about \$836,000 per life unnecessarily lost.</b>								
76					2008 salary figures used				
77	<b>If a similarity can be drawn to children's suicides consequent upon their father's suicide, then additional savings</b>								
78	<b>may have also been obtained outside the prison walls. This factor has been ignored in this simple</b>								
79	<b>analysis, to stay within tasteful bounds.</b>								
80	<b>By exercising management discretion, about \$4.2 million was saved, at the cost of losing 5 lives unnecessarily.</b>								
81	<b>This can be compared with road safety,</b>								
82	<b>where projects are authorised if they can save lives at less than \$2 million capital cost.</b>								
83									
84	<b>References:</b>								
85	Suicide Prevention in NZ Prisons 1969 to 1994 (25 years) NZ Department of Justice								
86	Explaining patterns of Suicide 2005 page 86 refers to prison suicide experimental deaths								

***2008 Justice department Call for Submissions - first principles analysis not wanted!***

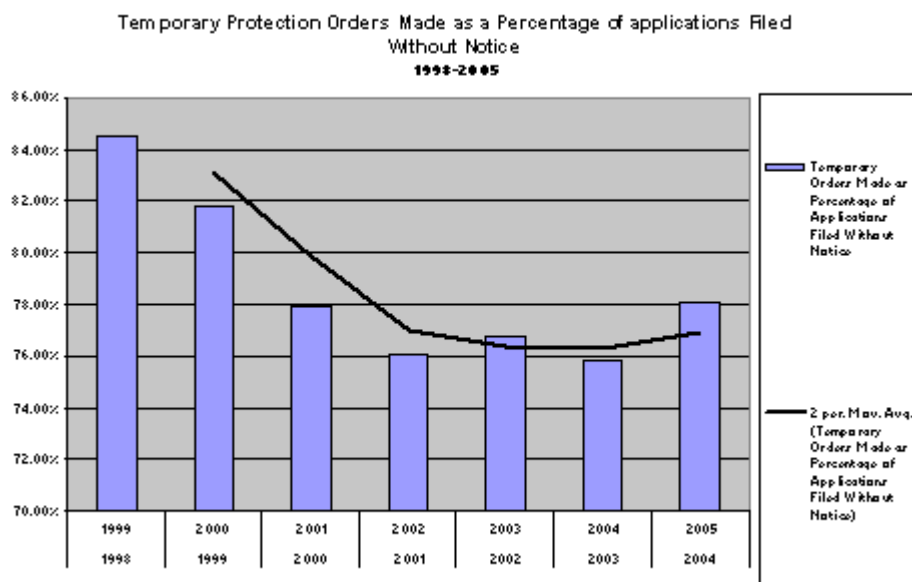
## Comparing issue of Protection Orders to Injuries Data 1998 to 2005

The data used to create these charts has come from the Family Court Website.



This shows a continuing decline over-time of applications filed and final orders made since the 1998-1999 year.

If you think about the amount of resources and focus that have been put into eliminating “domestic violence ” one would expect to see a reduction in the number of protection orders issued over time.

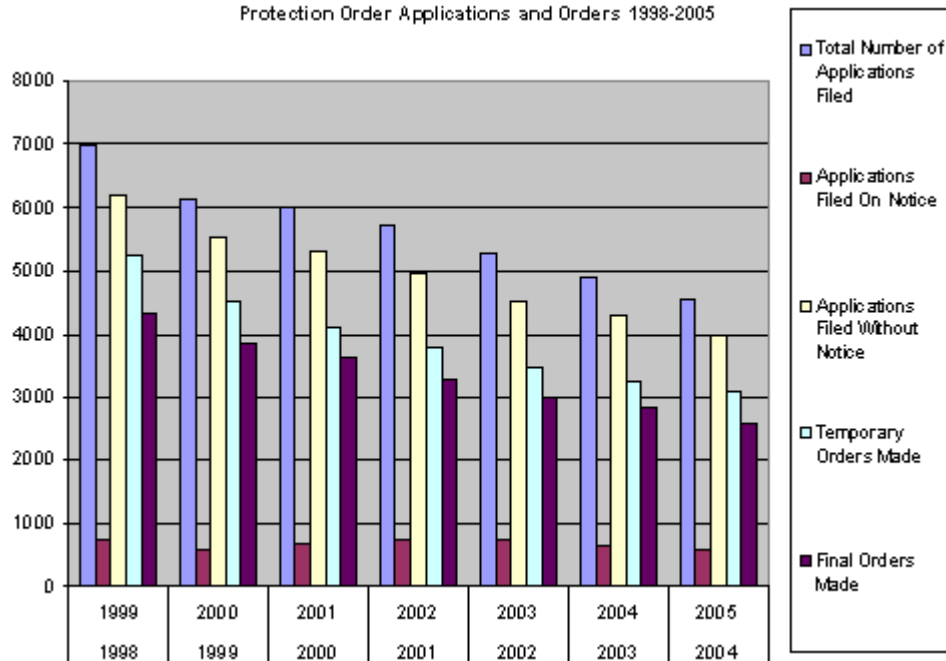


This graph shows that the figure for: Temporary protection orders made as a percentage of applications filed without notice.

The lowest figure is 75.8%. That shows since 1998-99 at least 3 out of 4 applications made without notice are made into temporary orders. While declining for a form a high of about 84% (1998-99) to a low of about 76% (2003-04) the number is increasing.

So if you are a woman and you apply for a protection order without notice 3 out of 4 times you will be granted the temporary protection order.

Protection Order Applications and Orders 1998-2005



from Relationship between homicide and mental illness in NZ

Published in August 2003 by the Health Research Council of New Zealand

**Table 8. Demographic characteristics of homicide offenders 1979 -2000**

Characteristics	Mentally normal offenders (n = 1154)		Mentally abnormal offenders (n = 93)		P value
	N	%	N	%	
Gender					
Male	1050	91	62	67	<.001 <sub>1</sub>
Female	104	9	31	33	

Homicide includes cases found guilty of manslaughter or of murder.

Women form about 33% of homicides where they were found not guilty by reason of legal insanity and about 9% of homicides where they were found to be fit to stand trial. Note that this is a very restrictive definition of mental disorder. Many of the perpetrators found fit to stand trial could have been diagnosed as having a mental disorder, but their legal advice probably was to stand trial, rather than risk indefinite imprisonment with a mental disorder classification. Taking this path denies them ready access to treatment, so that they risk a harder time in prison and being discharged from prison without receiving help to which they would otherwise expect to receive. A separate Corrections report [1999 Prevalence of Psychiatric Disorders among New Zealand Inmates prisoners justice department] observes that 80 to 90% of prisoners have serious mental disorders.

**Table 10. Victim characteristics of mentally normal and mentally abnormal homicide, 1988 to 2000**

Characteristics of victim <sup>1</sup>	Victims of mentally normal offenders ( <i>n</i> = 842)		Victims of mentally abnormal offenders ( <i>n</i> =73)	
	<i>n</i>	%	<i>n</i>	%
Gender	317	38	32	44
Male	189	22	29	40
Female	336	40	12	16
Unknown				
Age				
0 – 9	49	6	15	21
10-19	55	7	2	3
20-29	146	17	3	4
30-39	98	12	5	7
40-49	62	7	11	15
50-59	42	5	5	7
60-69	44	5	12	16
Unknown	346	41	20	27
Ethnicity				
European	264	31	25	34
Maori	144	17	21	29
Pacific Peoples	35	4	4	6
Asian	11	1	1	1
Indian	8	1	0	0
Other	9	1	2	3
Unknown	371	44	22	27
Relationship to offender <sup>2</sup>				
Partner – past or present	105	12	12	16
Family member	89	10	43	58
Friend	27	3	3	4
Acquaintance	179	20	14	19
Stranger	82	9	2	3
Unknown	456	50	0	0
Total	911	100	74	100
Residing in the same house at the time of the homicide				
Yes	132	16	36	50
No	305	36	17	23
Unknown	405	46	20	27

Victims of mentally disordered homicides are approximately equally male or female and a large proportion are children under 10 years. (Victims of mentally normally homicides are mainly men.) Remember that homicides of children make it hard to escape mental disorder classification and that many of the perpetrators of homicide would have been diagnosable as having a serious mental disorder.

When looking for domestic murders, remember that most murderers of children are compulsorily found not fit to plead, thus are discharged from murder and found guilty of manslaughter by reason of insanity. If these cases are added back in ie looking for homicide, then women show up to a greater extent, than in domestic **murder** data. In terms of hazard to victims, it is best to look at the homicide data, as listed above.

It is very difficult to obtain accurate perpetrator data. Many crimes by women are not recorded, due to being discharged as first offender. Even so, men are vastly over-represented in perpetration. (All men are....! doesn't give any value for improving our lives, it is just an obviously dishonest manipulative marketing slogan.)

NZ General accident statistics (<http://www.nzhis.govt.nz/stats/acccstats.html#10>):

Deaths from leading external causes, by sex and age, registered during calendar year 1999:

<b>Homicide</b>		
Total	Male	Female
51	39	12

Men are over represented in all forms of death other than by natural disease and aging. This includes death caused by another person and death by suicide. Men generally are risk takers. In some respects this is very desirable socially and in some respects it is unnecessarily self destructive. Where decisions are taken spur of the moment or by carelessness, which don't reflect the persons long term goals, then this may be seen as unnecessary loss.

We see that 2/3 of victims of violent death are men. Whether this is acceptable, tolerable or desirable is a matter of personal values. 80 to 90% of the perpetrators were men (see Table 8 above) and it is unlikely that any of the victims consented.

A request for information about NZ injuries and hospital stays, provided the following, for 1999: (Source: *Information Analyst, Business Intelligence, New Zealand Health Information Service, Ministry of Health*):

<b>9600 Unarmed fight or brawl:</b>			
	Mean	Total	day
	stay	stay	visit
	days	days	
Total:	2.8	1677	647
Male:	2.9	1353	496
Female:	2.0	324	151

Thus roughly 75% of injured persons were men and typically men's injuries required longer stay in hospital. (Gender of perpetrator not given.)

**9660 Assault by cutting and piercing instrument:**

	Mean	Total	day
	stay	stay	visit
	days	days	
Total:	2.9	329	79
Male:	2.9	277	72
Female:	3.3	52	7

Women typically required slightly longer hospital stay. Men comprise about 85% of the injured.

**9670 Child battering and other maltreatment by parent**

	Mean	Total	day
	stay	stay	visit
	days	days	
Total:	4.1	45	9
Male:	5.4	25	5
Female:	2.4	20	4

Typically boys required longer hospital stays and comprised a little over 50% of the injured.

**9672 Other maltreatment by spouse or partner**

	Mean	Total	day
	stay	stay	visit
	days	days	
Total:	5.8	80	30
Male:	3.8	5	1
Female:	6.0	75	29

Typically 90% women victims, with women requiring longer hospital stays.

All of these unintentional and intentional injury figures are extremely small compared to suicide and traffic accidents. When dealing with data so small compared to the total population of people in hospital, then small recording errors in the data, might be causing serious misjudgement, if we used the data without some caution. Slight classification errors, can create significant errors in the statistics. In particular, I would suspect (without any hard evidence) that men's hospital stays due to partner violence may be under-recorded. This could occur by some of these being classified into general assault category. Some such errors could occur due to the victims misreports and some due to adjustment by the people recording the data. (I am not meaning to imply deliberate errors. It is quite common for hospital staff to have relatively little patience with statistics gathering.)



## Overall conclusions:

Violence is a moderate problem in our community, behind suicide and traffic accidents. Domestic violence is only about 10 to maybe 20% of the total violence occurring in our community.

Injuries caused by violence are generally less serious than traffic accidents, in terms of average hospital stay. As violence is a relatively low level problem, solutions must be designed that are appropriate. If care isn't exercised, the attempted solution might actually cause more problems than it solves. For example, familycaught actions to restrict access of children to their fathers, while familycaught processes drag on for domestic violence or child abuse, may in fact be causing more social damage by children's and father's suicides, than the original abuse ever involved. We could be making the large suicide problem larger and even then not be making much improvement in the smaller domestic violence problem. We could also be making both problems worse? Similar conclusions might also come from looking carefully at removal of children from their mothers and fathers by CYFs.

This suggests that a successful solution will require wise and intelligent judgment based on actual facts (not assumptions), rather than dumb application of assumed standard solutions to wide groups of our population.

Comparing the numbers of "Protection Orders" (4,000 per year) to the numbers of murdered (50 per year) and injured men and women (1,000 per year needing daycare or overnight in hospital) and remembering that most of the injuries were not in domestic relationships, leads to the conclusion that "Protection Orders" are being handed out like confetti, by the familycaught "judges". This is indicative of the general lack of care and lack of skill regarding weighing of evidence, in familycaught. There is a big difference between targeting based on scape-goating and identifying individuals who do pose a material risk to those around them. Legal skills alone simply fail to perform in this area.

There seems to be a huge amount of "fear" in our community, where the actual basis for this fear is really quite small. The present hysterical reaction isn't making NZ safer for men and women, it is more related to moving Government funds into relatively unproductive and unaccountable "social change" organisations. Social improvements will come from targeting of resources at the real problems, accountability and keeping balance around all issues.

Fear in correct perspective of real hazards is constructive.

Fear out of perspective damages our society. Lets get our response in proportion and correctly targeted.

This does lead to serious concern that there is very little "judgment skill" being applied, in the decisions regarding "Protection Orders". Perhaps we should be looking much more carefully at the types of people and the training that we require, before someone is appointed as a familycaught judge. We do need people with relevant and useful skills in these jobs.

It is interesting to note that the murder rate per population has been remarkably constant for nearly 100 years. This is through years of plenty, years of economic hardship, through years of war. Through this period, there has been major social change due to economic development and immigration, huge developments in medicine and especially in psychology and pharmacology, yet the murder rate stays relatively constant. Through this period, NZs rate of imprisonment has increased and fallen with the need to fill prisons that have been built, but the murder rate has remained surprisingly constant.

Murder is a very small fraction of the deaths in the population, thus more reflects conditions of psychiatric health and stress in a very small fraction of the wider community.

This suggests that murder and extremely violent assaults will not respond significantly to generalised treatments aimed at the wider community ie 4000 DV PO per year!. Attempting to improve the murder and serious assault rate, by treating everyone in the community, would require a treatment this is very low cost **and** very safe. Otherwise, the programme would do more damage to the community, than the small reduction in the murder and serious assault rate could ever justify. The programme could easily do more harm than good!

To obtain a worthwhile improvement, treatments need to be focused on individuals with psychiatric problems, especially relating to violence and the treatments must be relevant to the needs of these people. Frustration is usually a key ingredient. This might be reduced if the familycaught contributed to solving problems and likewise can be increased when familycaught decisions lack relevance and constructive value in the real world.

Medical doctors always plan treatment, on the basis of assessing the measured risks and the measured benefits with a professional level of skill and always try to learn from any mistakes made, as quickly as possible.

Domestic Violence Act Submission 2008 \_\_\_\_\_ by Murray Bacon \_\_\_\_\_ revision 43  
When applying a remedial measure across the **whole** population, which can **only benefit a very small section of the population**, then it is necessary to be very confident that the treatment will have no ill effects on the wider population group, or the net effect can easily be very destructive. For example, before fluoridation of public water supplies was implemented, the health impact on the whole population was studied very carefully, before this treatment was imposed onto the whole population. For example, would there be ill effects on any subgroups, people in poor health, older people, people with some diseases? When these questions had been answered with confidence, then fluoridation of water supplies was authorised and has been very successful.

**Thus the concept that familycaught judges operate by, that children should be given to women and that all men should have access to their own children restricted and broken, may in fact be doing individual children and our society considerable harm.**

For example, children separated from their fathers typically show higher risk of the following problems:

- girls reach puberty 12 to 18 months younger - younger puberty increases the risk of teenage and younger pregnancy
- general and sexual health is typically poorer
- boys do more poorly at school and in many other long term focused activities
- both boys and girls later show poorer market employment development
- both boys and girls show much increased risk of suicide and psychiatric problems

Thus, restricting access of children to their fathers is not the “no damage” situation, that these familycaught judges assume, through their lack of knowledge about society and lack of care. Damage is done to the children and to the fathers. Where it is the mother that is removed, then the same applies likewise.

If familycaught judges received professional level training, relevant to the types of “decisions” that they were making, then the familycaught performance would start to improve reasonably quickly.

Sir Ron Davison may have meant well, but his “research” into the causes of domestic violence were more expensive than professional. His assumptions about treatment and who it should be given to, were guesses, based on good intentions rather than professional level research skills and statistically significant sampling followed by collection of true facts. Although I am heaping scorn on his efforts, as being unprofessionally cost ineffective, I do acknowledge that research into issues relating to very small (difficult to identify before the fact) sections of our community are very challenging to perform successfully. He is a professional legal worker, not a professionally trained social sciences researcher. They just employed the wrong guy! The road to hell is paved with good intentions! Spending money on getting a legal worker to investigate domestic violence not only didn’t achieve much, but it soaked up money that would have gone much further, if it was spent on professional social science researchers. I believe that Sir Ron received about \$500,000 for a month or two’s work. The same money could have obtained about 10 years of social research work.

familycaught performance issues need to be professionally evaluated, in a public Commission of Enquiry into the operation of the familycaught, if we wish to break the cycle of abuse of Government money by legal workers.

Don’t gamble with your children, in the familycaught.

To summarise:

In 1999, there were about 4,000 Protection Orders issued permanently, for 12 domestic murders and about 150 injuries requiring hospital treatment. This is a shotgun approach - shoot anyone or anything in sight! With only 150 injuries per year requiring hospital treatment, then the number of justified DV PO must surely be less than 500, so if we were to assume that 1000 DV POs were justified to some extent, we would probably be being generous.

So what?

There were obviously some 3000 wrong hits, with familycaught doing at least some social damage. For all of the shots, barely a single shot hit the right place, resulting in 1 less injury or death.

## ***Dynamics of issuing DV POs:***

Of the 10 to 15 domestic murders most years, I understand that only about 1/3 had a DV PO previously issued, say about 5 cases per year.

Even in this situation, what real protection is offered by a piece of paper issued by a "dipstick judge"? (As seen by violent perpetrator)

Thus, it doesn't seem surprising that the number of domestic murders has barely been impacted by the issuing of 500 to maybe 1000 possibly justified DV POs and a further 3000 totally unjustified DV POs.

**In many cases, if the "man" feels that the DV PO was issued without justification and in breach of natural justice, they may feel that they have had the punishment - so they may as well do the crime, even if only belatedly!**

**Is it wise and appropriate to put 3 to 4000 men into this position each year?**

For the other handful of murders, about 5 to 10 per year, there was no DV PO and the possibility of a DV PO probably never figured in the heat of the moment of stupidity.

**From this consideration of the dynamics of issuing DV POs, it can be seen that the DV PO is essentially irrelevant to the issue of 1 person injuring or killing another. The process involves breaching thousands of people's rights and freedoms, for delivering practically no assistance to people at risk of being injured or killed.**

Was anything positive achieved?

Through the time the Domestic Violence Act has been in force, there has barely been any measurable reduction in domestic violence. What reduction has occurred, would appear to be related more to society wide reductions in violence, than the effects of familycaught "Protection Orders".

Thus the evidence points to familycaught intervention being expensively spectacularly ineffective.

Who is surprised?

**Successful medical or social interventions come after the strategy is devised, based on careful, good quality research. Doing something unsuccessful ("Protection Orders") more or harder, only makes the situation worse. The familycaught has thus far protected itself from public accountability, allowing its destructive performance to roll on.**

**If we want to improve these social problems, then we do need to investigate the causes and work out interventions that give measurable benefits and at an acceptable measured social cost. This will never happen by accident.**

**It will only happen, when the process is managed by people who know what they are doing, not avaricious legal workers!**

***NZ Suicide Statistics and Impact of DV Act on them 1975 to 2004***

Suicide Facts 2004–2005 data Public Health Intelligence Monitoring Report No. 11

**Page 10****Table 2:** Suicide death rates, by five-year age group and sex, 2004

	Males		Females		Total	
	Number	Rate	Number	Rate	Number	Rate
5–9	0	–	0	–	0	–
10–14	4	–	2	–	6	1.9
15–19	33	21.4	16	10.9	49	16.3
20–24	49	33.6	14	10	63	22.0
25–29	44	35.5	6	4.7	50	19.8
30–34	31	22.1	13	8.5	44	15.0
35–39	44	30.1	13	8.3	57	18.8
40–44	39	25.1	7	4.3	46	14.4
45–49	31	22.1	10	6.9	41	14.4
50–54	18	14.5	7	5.5	25	10.0
55–59	23	20.6	9	8	32	14.2
60–64	17	19.5	3	–	20	11.4
65–69	9	13.3	2	–	11	7.9
70–74	8	13.9	4	–	12	10.0
75–79	11	24.1	1	–	12	11.9
80–84	7	25.3	2	–	9	12.7
85+	9	54.9	0	–	9	16.8
Total	377	20.3	109	5.8	486	12.8

Source: New Zealand Health Information Service

Note: A dash (–) indicates that the rate was suppressed because there were fewer than five deaths in this age group. Age group rates are age-specific per 100,000. Total rates are per 100,000 age-standard to the World Health Organization standard population.

Table A5: Suicide deaths and age-specific rates, by sex, 15–24 years, 1948–2004 Page 22

Year	Males		Females		Total	
	Number	Rate	Number	Rate	Number	Rate
1948	16	11.4	2	–	18	6.5
1949	13	9.2	5	3.7	18	6.5
1950	14	9.9	0	–	14	5.1
1951	11	7.9	1	–	12	4.4
1952	12	8.6	1	–	13	4.7
1953	10	7.1	2	–	12	4.3
1954	5	3.5	0	–	5	1.8
1955	7	4.8	5	3.5	12	4.2
1956	6	4.0	2	–	8	2.7
1957	15	9.6	1	–	16	5.2
1958	13	8.0	3	–	16	5.1
1959	14	8.4	3	–	17	5.2
1960	10	5.8	4	–	14	4.2
1961	15	8.3	2	–	17	4.8
1962	8	4.2	5	2.8	13	3.5
1963	19	9.5	4	–	23	5.9
1964	5	2.4	8	4.0	13	3.2
1965	13	5.9	8	3.8	21	4.9
1966	11	4.9	12	5.6	23	5.2
1967	21	9.2	6	2.7	27	6.0
1968	20	8.5	5	2.2	25	5.4
1969	22	9.2	14	6.0	36	7.6
1970	30	12.1	9	3.8	39	8.0
1971	24	9.4	12	4.9	36	7.2
1972	23	8.9	13	5.2	36	7.1
1973	27	10.1	12	4.7	39	7.5
1974	27	9.8	9	3.4	36	6.7
1975	37	13.2	15	5.6	52	9.4
1976	34	11.9	8	2.9	42	7.5
1977	59	20.3	11	4.0	70	12.3
1978	47	16.0	8	2.8	55	9.6
1979	36	12.2	11	3.9	47	8.2
1980	58	19.5	23	8.1	81	13.9
1981	50	16.9	10	3.5	60	10.4
1982	52	17.5	11	3.8	63	10.8
1983	58	19.2	12	4.1	70	11.8
1984	57	18.7	15	5.1	72	12.0
1985	60	19.6	15	5.1	75	12.6
1986	68	22.9	23	8.0	91	15.6
1987	93	31.2	20	6.9	113	19.3
1988	106	35.7	25	8.7	131	22.4
1989	111	37.9	20	7.0	131	22.6
1990	111	38.0	19	6.7	130	22.5
1991	109	38.7	16	5.8	125	22.4
1992	112	39.9	17	6.2	129	23.3
1993	110	39.4	16	5.9	126	22.9

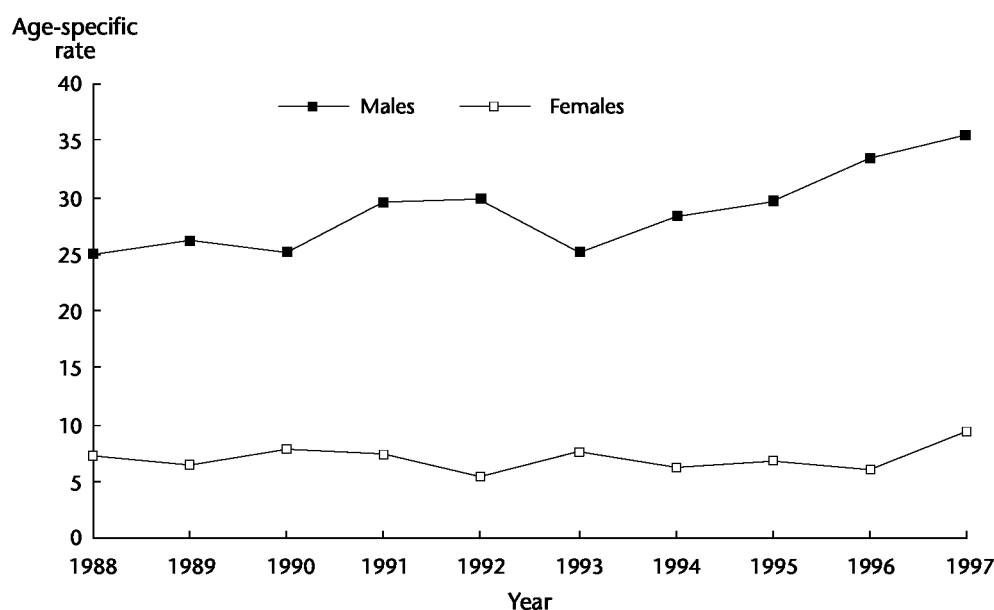
1994	111	39.9	26	9.7	137	25.1
1995	122	44.1	34	12.8	156	28.7
1996	105	39.1	38	14.3	143	26.7
1997	113	41.1	29	10.8	142	26.2
1998	105	38.5	35	13.3	140	26.1
1999	83	30.6	37	14.2	120	22.6
2000	81	29.9	15	5.8	96	18.1
2001	87	32.2	23	8.7	110	20.6
2002	65	23.2	30	11.0	95	17.2
2003	66	22.5	31	11.0	97	16.9
2004	82	27.3	30	10.5	112	19.1

Source: New Zealand Health Information Service

Note: A dash (–) indicates that the rate was suppressed because there were fewer than five deaths in this age group.

The table above is 15 to 24 years, I really should have 25 to 35 year old data, but I have not been able to find the similar data for the 25 ??????

**Young men's suicide figures showed sharp rises in about 1970, 1980, 1988 and a small reduction from 1995 through to the present. This is crudely consistent with my claim that these suicides are partly related to ongoing systematic breaches of natural justice perpetrated into the family caught, in the name of supporting powerless perjurious women, to give them access to easy DP Benefits.**



**Figure 31:**

*Suicide rates, by sex, 25–44-year age group, 1988–97.*

Age-specific rates per 100 000 population.

The graph above only shows 1988 to 1998 - it would be better to go right back to 1970??????

The large increase in suicide by 15 - 24 and 24 to 35 year old men did not coincide exactly with the opening of the family caught, or the DV Act. Notwithstanding this, I still believe that the operating of the family caught, disrespecting of fathers and "supportive" of most mothers, is a significant factor in men's suicides.

## ***The Mental Health Of Separated Fathers***

### **FIRST NATIONAL CONFERENCE ON MENTAL HEALTH OF PERSONS AFFECTED BY FAMILY SEPARATION**

Education Centre, Liverpool Hospital, Liverpool Australia

10-11 October 2002

#### **FATHERS AND THE EXPERIENCE OF FAMILY SEPARATION**

Dr David Crawford, Professor John Macdonald

Men's Health Information and Resource Centre, UWS Hawkesbury

**Filename: Fathers mental health after separation suicide after separation risks.pdf**

#### **Page 2: SEPARATION – THE EMOTIONAL-PSYCHOLOGICAL IMPACT**

There is slowly growing research on the emotional distress fathers' experience in the aftermath of separation, lasting at least up to two years.

The Director of a community agency that helps families in conflict said at the Men and Family Relationships conference in 1998, *When separation occurs many men are taken by surprise - they just didn't see it coming - and they feel like they've been hit by 'a ton of bricks'. Initial disbelief and shock gives way to an inner numbness and despair. An overwhelming sense of loss develops as they face the harsh reality that their future role in the lives of their children will most likely be on a part-time basis only.* (Susan Price 1998).

In 1984 Jordan (a counsellor with the Family Court) conducted a study of 164 Brisbane based men on the effects of separation and divorce - 75% of the men were under 40 years separation was mostly initiated by women (65%), and often came as a total shock, most striking effect was in area mental health, over 60% reported long-lasting stress related symptoms (for 1-2 years after separation) such as sleeplessness, reduced energy, poor appetite and excessive tiredness.

In 1994 Jordan conducted a follow-up study with a new sample of divorced men and the original group - and had similar results the symptoms of headaches, sleeplessness, reduced energy peaked at separation but tended to abate 1-2 years later 33% of this group reported having the stress related symptoms one to two years after separation, of the original group of divorced men, 10 years later, over 60% were coping well, but 1/3 claimed they would never get over the divorce, and 2/3 still felt dumped.

Around separation a great proportion of men experience considerable psychological distress.

And whilst most of the divorced men cope well after about two years, yet a sizeable number do not. But it is important to consider what is happening in their lives at this time.

#### *Separated fathers trying to cope with daily living issues*

Some of the issues newly separated fathers have to deal with:

- loss of family life and identifying framework of father-parent, a very personal emotional issue about self-identity,
- loss of emotional connection-support of family life,
- disconnection with their children,

'many fathers say that the thing they have missed most is the everyday world of their children growing up' - (Green 1998) Jordan comments in his 1994 study, most of men do not walk away from their children and continue to care greatly about them, having to establish a new home, life routines and establish new friendships. Finding a new home and fitting it out is not an easy process, Financial problems – fathers should provide child support – but often the man must finance two households, his new home, and in some cases the family home occupied by his ex-partners and children, These men have to totally re-establish a new life. As Micheal Green says, 'these things are not trivial'.

#### **FAMILY LAW AND FINANCIAL PROBLEMS**

There is abundant evidence that family law and related financial issues are especially problematic for separated fathers, with implications for their mental health and well-being. Family law has been a longstanding problem area for separated fathers, (raised as long ago as in submissions to the 1991 Federal parliamentary committee).

Some of issues include problems of access to children, court proceedings, maintenance and even false allegations of abuse (as documented by Green), being encountered by large numbers of separated fathers.

Green as a QC, is very critical of the Family Court system describes it as, 'depressing, divisive, hostile and costly' (1998, xi), and

The 'father is seen as the disposable parent',

Fathers are usually allowed little more than fortnightly contact with their children.

The Central Coast Health Service conducted a men's issues phone-in in 1999. It received 100 calls about major issues in the men's lives affecting their health,

- 57% of the callers were aged 25-44 years and 38% were unemployed;

Family law problems were the most common issue - for over 50% of callers,

Specifically, separation-divorce and financial problems,

Main issue for callers was around fulfilling involvement with their children,

Half of the financial problems related to issues of child support, settlement and legal fees to gain child access.

A great many of these men were upset about the loss of their children, many expressed extreme frustration at how little support they received in their attempts to maintain on-going relationships with their children, despite in some cases attempts by mothers to cut them off.

Small scale US research of low-income young fathers (under 30) reported similar problems with custody, access and financial family law matters (Lehr & Macmillan 2001).

Another small scale American study shows that conflict over custody arrangements affect fathers' sense of well-being after divorce. However, clarity about the father's post-divorce role and subsequent satisfaction, as well as a new relationship, have been identified as factors that positively contribute to a separated fathers' well-being (Stone 2001).

#### *Financial problems*

Under current Child Support Agency arrangements 2/3 non-resident parents support their children (Green 1998, 237).

A Family Court research report of 1992 found that 27% of fathers claimed the maintenance system was financially crippling, forcing them to live in shared accommodation or with their parents.

Large numbers of fathers it appears by anecdotal evidence, are having financial problems, especially those with new families, but information is not readily available from the relevant federal agencies.

Australian research published last year shows current government formulas for determining child support devalue the role and financial needs of non-resident parent.

It is estimated that where contact with one child is for only 20% of nights of the year, the cost (principally household & transport) represents more than 40% of the total yearly costs of raising that child in an intact, middle income household (Henman & Mitchell 2001).

Another contentious issue - with settlement there is often unequal distribution of property in favour of the mother, usually because of her lower earning power, she may receive – as Green mentions - 65-70% of joint assets.

Whilst this can be understandable where mother has custody, the separated father may not be able to purchase another property.

#### **SEPARATED FATHERS AND SUICIDE**

At the Men's Health Conference in 2001, it was suggested by the then assistant director of the Federal Men & Family Relationships' program, that one separated man commits suicide each day (Orkin 2001),

**there are many anecdotal stories of recently separated men taking their lives.**

Research by Cantor on suicides in Qld over 1990–2, shows that separated men are 6 times more likely to suicide than married men, and this was greatest in the age group upto 29 years.

Separated males aged 30-54 are 12 times more likely to suicide than separated women. But divorce, in contrast to separation, doubled the risk for females of the 30-54 age group (Cantor & Slater 1995).

**They comment that, 'males may be particularly vulnerable to suicide associated with interpersonal conflict in the separation phase'.**

The Qld Health Suicide Research Project is a study of some 2600 suicides in Qld for 1990-95.

In a sub-group (n=294) that reported on relationship separation and length of time, 73% of suicides occurred within one month of the relationship change.

**It concluded that, 'separated marital status is a major risk factor for males', (Baume, Cantor, Taggart 1998).**



## ***Example of delivering suicide triggers - judge dale green***

Good morning judge green, now known as judge clarkson.

I met you at a familycaught hearing at 10 am on 6th October 1992. I had applied for this hearing 10 months earlier, after my children were abducted from my settled care and then re-enrolled into schools in the mother's area. Although I applied to the familycaught in good faith, you used every available delaying tactic, so that it could be said that the children were now in the mother's settled care. Essentially, you manufactured evidence, to support the child abducting mother.

As I walked into the hearing, I had known for 9 months that the hearing would be a charade, could only be a charade, just a dishonest window dressing amateur theatre. The fact that you had left the children in her care and delayed access to a hearing for 11 months, made it clear that your decision about whether to return the children after abduction, had actually been taken when the familycaught received the papers, that is before the evidence had been heard.

The only information that your decision was based on - was that the abductor was the mother.

When I asked you, for my children's relationship with me to be protected from child abduction, you said "I am not here for men, I am here to protect women and children". Her decision approved the abduction and set it's consequences into concrete. Further, it encouraged the children's mother to do the same again, two and a half years later. Her approach did not seem to me to be an act of integrity.

Your statement "I am not here for men, I am here to protect women and children", told me that you didn't see any value in honesty between parents, or in protecting children from mother-abductors.

I couldn't understand how a judge couldn't place any value on honesty between parents. To bring up a child competently and with discipline, honesty is necessary to stop the children playing off the parents against each other. This is just as necessary between separated parents, as still married parents. Honesty between parents allows them to negotiate to make the best life for their children, by efficiently utilizing their resources. Dishonesty wastes resources, thus impoverishing what the parents can offer their children. Dishonesty between parents doesn't develop children who can be emotionally competent as an adult, sustaining an intimate relationship.

How could a judge not value honesty?  
How could a judge reward dishonesty?

It is only through honesty between parents, that parents can work together to provide consistent, effective and appropriate discipline for their children.

It is only through honesty between parents, that parents can work together constructively and productively, to bring up their children and give them the best.

Through your knowledge of "family law", you appear to know nothing about real world parenting, discipline of children or family budgeting. "Family law" may exist as a legal academic subject, but it has less than no value in contributing to the parenting of children in the real world. "Family law" is simply irrelevant and destructive, in it's impacts onto real world parenting.

"Family law" only has value to legal workers, for extending disputes and increasing legal workers extortionate charges to the families of children.

Your statement, "I am not here for men, I am here to protect women and children", also told me that you have repudiated your judicial oath.

The judicial oath is given in the Oaths and Declarations Act, available on [www.legislation.co.nz](http://www.legislation.co.nz) and it says:

I, dale green, swear that I will well and truly serve Her Majesty Queen Elizabeth, Her heirs and successors, according to law, in the office of District Caught Judge; and I will do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will. So help me God.

Your statement, "I am not here for men, I am here to protect women and children", also told me that you have repudiated your judicial oath.

I do appreciate your honesty, by saying this to my face, in your secret caught.

By repudiating your judicial oath, you have chosen to revert from judge green, to plain dale green. In the same way that you placed my children and I outside of the protection of statute law, you have acted outside the law and placed yourself outside the statutory immunity protection for judges, while acting judicially.

You have taken the responsibility for your actions onto your own shoulders. You tried to make me out as an outlaw, a person outside the protection of Parliament's laws. You stand outside the legislation and you have also made yourself into an outlaw.

When questions of responsibility for the consequences of judgements arise, judges have found no personal responsibility on the part of the judge, when acting judicially, that is - within the law. However, dale green, when acting outside of your judicial oath, outside of Parliament's legislation, then you must carry the responsibility PERSONALLY.

After 2 hours of hearing, with only 10 minutes devoted to parenting skills and resources, you then scoffed at your own conclusions about parenting skills and awarded ongoing custody to the mother-abductor.

You followed "judge made law", not the legislation set down by Parliament, for all citizens and judges to follow. These previous judgements that you followed, are not available to citizens, as they are unpublished judgements. They are seen only by legal workers practicing in familycaught and judges. The judgements published by the legal publishers show only the judgements which comply with legislation. How is it, that there are two sets of laws, one available to citizens and one available only to judges and legal workers in familycaught for use in secret trials?

In a genuine common-law country, all judgements are sent to the legal publishers and they are free to decide which of these set new precedents and will be published. judge mahony discussed this when he met with Parliament's Social Services Subcommittee, on 16th May 2001. Principal Family Court Judge Patrick Mahony appeared before the Social Services Select Committee. He was heavily criticised in the media for insisting the press be excluded. The full document is available at:

<http://menz.org.nz/News%20archive/mahonyssc.pdf>

Here is an extract from the transcript of his memorandum:

"I have accepted your invitation to meet with you to provide information and answer questions as far as I am able against an acceptance that the Courts and the Judiciary are independent of Parliament and its processes. So I have not come in any sense as being answerable to Parliament or the Committee, but in the hope that through sharing information I can be helpful.

.....

Public confidence in the Courts is just as important as it is for the law making process through Parliament. It is in that context that I have been concerned at recent criticism of the Family Court aired in the media insofar as it has been ill informed, exaggerated and couched in terms calculated to destroy the Court's credibility, particularly when it has been directed at the personal and professional integrity of the Judges.

.....

The Family Proceedings Act placed an obligation on legal advisers to ensure that clients were aware of the counselling services available and an obligation on the Family Court to promote conciliation.

.....

(b) It should have specialist Judges who are legally trained and qualified by personality, experience, and interest to decide matters and direct overall activities of a Family Court.

.....

(e) Strict adversary rules should be relaxed, as assured the more traditional forms of dress and address so that, when cases have to be resolved in Court, the hearing can be conducted in an atmosphere of relative informality. The aim of the Court should be to help resolve problems with the co-operation of the parties, wherever that is possible, and with a minimum of disruption in all cases.

.....

All Judgments are sent to the legal publishers through my office. They have the editorial freedom to choose cases for reporting in the two series of Family Law Reports published in New Zealand.

Unreported Judgments are also available through the legal publishers and are frequently referred to in the Family Court manuals published by both Butterworths and Brookers. They are unavailable to legal academics and the Universities who teach family law and are free to scrutinise and comment on Judgments of the Court."

"unavailable" presumably was a transcription error and should read available.

Although judge mahony claimed that all judgements are supplied to legal publishers and are available to legal academics, this simply is quite untrue. After I had received a reference to a case, in a published appeal K v C appeal against removal of child without notice Priestly 21FRNZ686, I searched for the original judgement, that had been appealed against. I asked a Professor of Law if he had the original judgement and he replied that he frequently has difficulty in obtaining familycaught judgements.

It is interesting to read judge mahony's submission, as I believe that there is not a single page which is completely truthful and not misleading.

So judge green, where does your judgement fit into the issue of whether NZ is a genuine common law or bound by precedent country. I asked both Butterworths and Brookers, the two legal publishers operating in NZ, whether they held copies of the judgement that you issued in the hearing of 6th October 1992. I asked under the Privacy Act, so that they are required to answer truthfully. Both said that they did not hold this judgement.

So, when you know that you are acting outside of Parliament's legislation, then you don't supply the judgement to the legal publishers, as this would enable the public to see whether you were acting outside of the law.

The Interpretation Act defines how courts should analyse the meanings of a statute, if this is not already completely obvious and unambiguous. It is required that words shall have their common english useage, unless the term has a well known legal definition.

How to Understand an Act of Parliament 7TH EDITION by D. J. GIFFORD

Words used in an Act of Parliament (if they are not defined in the Act) are to be read as having the meaning which they had in ordinary speech (or, if they are technical words, then as having their technical meaning) at the time when the Act was passed:

When we look at the "legal definition" of "best interests of the child", should this have the meaning taken by familycaught legal workers, or the meaning accepted by competent and successful parents?

The "legal definition" is based on a legal analysis of the family, an analysis no more sophisticated than who was born with male genitals and who was born with female genitals. This should easily result in treating like cases in a like way!, but is this sufficient to meet the term "best interests of the child", as it is understood by successful and competent parents?

Clearly this "legal definition" of "best interests of the child" fails to include issues such as each of the parent's skills, resources for parenting, support from family and friends and all of the cultural issues as well.

Although the "legal definition" is accepted by legal workers and familycaught judges, it is not seen as sufficient to do justice to "the best interests of the child", by any competent and successful parent.

So, what are the consequences for the children when a familycaught judge goes off the rails, outside of the legislation set down by Parliament? The mother of my two children felt free to break familycaught Orders for access, hundreds of times through the following 12 years. I never applied to the familycaught for assistance at enforcing these Orders, as it was clear from dale green's behaviour, that the orders and the familycaught could not be taken seriously.

I lost all remaining trust of familycaught judges and for all aspects of this Mickey Mouse caught. You saw me as an outlaw dale green, living outside the protection of the laws passed by Parliament. I see you dale green, as an outlaw, you choose to work outside the law.

The Guardianship Act gives both parents the right to take part in decisions affecting their children. You turned your back on this legislation. Following on from you, judge M D robinson also approved the next abduction from my care. By removing from me the ability to take part in decisions protecting my children, you acted to prevent me from being able to protect my children from their abductor mother.

The stresses of this lawless lifestyle and lack of parental discipline, led to my older son leaving school, without even passing 3rd form exams. So what, a lifetime loss of almost a hundred thousand dollars doesn't even register to a familycaught judge, you just couldn't care less!

I was slapped across the face by your statement, "I am not here for men, I am here to protect women and children". I realised that the "Alice in Wonderland" stories I had heard about the familycaught were true and that in practice I was going to be prevented from taking any part in the decisions relating to my children's upbringing. This being to the point that you, dale green, saw fit to prefer the parenting of a child-abductor mother, over that of an honest father.

I had a suicidal streak throughout my childhood. Your expression of me as an outlaw, pressed these buttons again. I pulled myself away from these suicidal thoughts as quickly as I could, through the following 18 months. I tried to not look back. I dismissed it as my own troubled reaction.

I have an interest in suicide, as I know how many separating men (and probably women too) harbour suicidal thoughts, for some time during the separating process. Some of the triggers are "insensitive" comments made by family court legal workers, both judges and lawyers. I know that most people don't act on these thoughts, as they have later discussed them with me.

I know that a large proportion of male suicides, are in the year or two after separation, so that the connection between men discussing suicide triggers pressed by familycaught workers and the significant number of suicides in the short period after separation is not just a coincidence.

I looked up NZ's suicide statistics. It is terrible, when any person takes a long term solution, for a short term problem. Since the introduction of the familycaught, men in the age range 20 to 45 have been committing suicide at about x4 the rate in the previous 25 year period. Most of this increase occurred in the first 5 years after the familycaught opened for trade, since judges gained the freedom to operate under protection of secrecy. This is an increase in suicide deaths from about 2000 in 25 years from 1955 to 1980 to nearly 9000 from 1980 to 2005.

Keeping suicide in perspective, the average GP is involved with a suicide every 18 months, they are not particularly common. They have a similar incidence to road fatalities, actually a little lower. Road deaths are probably over-reported, as suicides are probably under-reported. Fortunately therefore, most of us do not have immediate family personal experience of completed suicide. This low incidence leads many in the public to not take this subject seriously, until it strikes very close to home. Then it is too late.

Much of this increase might be due to increased work stress and financial pressure to support families. This period has had it's ups and downs, but generally there has been steadily increasing wealth. Through this 50 year period, there has been peacetime and substantial development in psychiatric treatments and medicines. These should have led to a significant reduction in suicides triggered by psychiatric conditions.

Careful analysis of road deaths, has led to safer roads and safer cars. Better emergency access to hospital treatment has also reduced deaths and the impacts of injuries. Improved driver testing, has also led to a reduction in road deaths. Between these two 25 year periods, there has been a reduction in road deaths of about 5000 people.

Why then, has suicide in 20 to 45 year old men increased by x4, through this period, especially through a period without major war? Most of the increase in the suicide rate occurred through the first five years that the secret familycaught first traded.

Was my personal experience of dale green and familycaught usual or unusual?

If it was typical, then dale green's repudiation of her judicial oath and favouring of mother-abductors and similar activities by some other judges, may be resulting in many men and some women too, deciding to escape from NZ through suicide.

If she has behaved similarly with other men and perhaps one of them did decide to follow through on his suicidal impulses, then it is probable that Judge Green is a manslaughterer, quite possibly many times over. Gallons and gallons and gallons of blood may have been callously spilt, by her trying to prove her feminist credentials.

If my treatment was "normal", then we could expect that similar treatment would be foreseeably likely to tip a significant number of the 5,000 men who are dragged through the familycaught each year, to consider and complete suicide. Even if only say 0.5% of separating men did complete suicide, then we would be seeing 25 additional suicides per year, which is in line with recorded suicides.

At 25 additional suicides per year, then since the familycaught started trading, at 500 suicides total, there would be an average of 4 suicides for each judge. Some judges may not have triggered any suicides. More dismal judges may be responsible for far higher than 4 suicides.

Now that I have looked back on my own experience in the familycaught, I see that even if I avoided the final solution, about 15 men each year may be falling into the man-traps set by these judges, acting outside of legislation passed by Parliament.

I am not saying that all familycaught judges behave in these ways. Probably, some judges deliver suicidal triggers much more than others. I am not accusing them of doing it consciously, deliberately and murderously. I believe that killing people in a foreseeable way is still culpable manslaughter, even when hiding behind the british tradition of judges not taking responsibility for their decisions. To the extent that these judicial behaviours foreseeably deliver suicide triggers, then there is personal responsibility.

This raises the issue of the appointment of people with legal, but not judicial training, as judges. In choosing to accept the risk of appointing lay judges, we wear the additional suicides, triggered by these under-skilled judges.

I know that judges are taught to NOT personally take responsibility for their decisions. In the days of hanging, a mistake could amount to "legal" cold blooded murder. Who would want to face the responsibility for their own error or mistake, extinguishing an innocent human life?

If I assault my friend, who unknown to me has a weak blood vessel in his brain and he dies, then I will be required to wear the responsibility. There is a rule in common law, that "you take your victim as you find him". In a similar way, in my opinion, when a judge says to a man (Judge Green to me on 6th October 1992), after this hearing and as its consequences for my children and I unfolded, I gave serious consideration to killing myself. I did not want to be associated with bringing up my children, through the type of relationships being imposed by the Family Court. I had decided to have children, to offer them the best parenting I could.

I cannot stand silently by, while this careless carnage goes on. Parliament never envisaged that these judges would act so far outside of the legislation, at such an unnecessary bloody cost to our community.

Judges acting judicially, are not held accountable for the consequences of their judgements. However, this protection does not apply when they act illegally, outside of statute law, as in your case dale green. Your responsibility is personal. As the consequences are not reversible, you wear this blood all over your hands, blood that can never be washed off. Over 20 litres of blood.

Listeners, if you have a family member, friend or work colleague who has killed them-self, please find out whether the familycaught judges may have played an active role in their decision to destroy their life. If so, was their decision affected by any illegal aspects of how they were treated by these acting judges? If so, who is the culpable judge?

It is necessary to look very closely at the file and all papers in it. Just looking at the judgements does not give a complete or honest understanding of what has really happened through the familycaught process. Usually blackmail and threats are verbal or implied. These legal workers are really cowards, of the lowest order. They never stand up to carry responsibility for their actions.

Please do not shrink away from this cold dark task. I am not asking you to face these bloody demons, for the pleasure of facing off with death, but to protect our still alive sons, daughters, family and friends. Lets find out who are the worst death-dealing judges, so that we can replace them by judges who are willing to carry out their job, legally and with family competence.

I invite people to communicate their good and less good experiences with dale green, the acting judge. What conclusion can be drawn from a wider sample of her practice as a judge?

Someone could suggest that only weak men, with severe psychiatric problems, would complete suicide. I suggest that these people are already showing in the suicide rate prior to 1980, the trading start of the familycaught. Many of our most creative artists, writers, scientists and teachers have fought some of their life with mental illness issues. Notwithstanding this, they have contributed greatly to the cultural life of our nation - probably more so than any legal worker in NZ.

Here I am only discussing the additional suicides. If I punch and knock to the ground my opponent and he dies, due to weak blood vessels in the brain, then I am required to carry full responsibility. I take my victim as I find him.

If a doctor takes a life through careless application of his craft, the courts are very willing to place the responsibility onto his shoulders.

I am only asking that our society place the same burden, the same duty of care onto our responsibility ducking judges.

Lets stop the unnecessary bloodletting. Lets **respect** all members of our community.

## ***What is the present DV Act communicating to our children?***

The present DV Act and Tender Years Doctrine are trying to communicate to our children that men cannot take care of children, especially young children, not by facts but by judges decisions made mechanically and automatically without input from human wisdom.

When such doctrine's are applied, without competently evaluating the facts of the individual situation, then there is a large risk that the outcomes will be sub-optimal. This is clearly against the interests of our children, but makes "judges" jobs much easier to perform. This smacks of sheer laziness and lack of relevant skills to perform the job.

The women who gain their DPB, children's custody and DV PO by perjury, are the very group of women in our society who are least equipped to be solo mothers or parents in our society. By rolling over to these women, our "judges" are abdicating their duty to protect our children.

The majority of NZ women are happy and willing to share their children, with the fathers of the children.

The mothers who seek to prevent their children benefiting from their relationship with the child's father, are not the type of parents who can be trusted to do a good job of parenting, **let alone solo parenting.**

## Alternative Elements to solve existing problems

### *Parenting Plan Mediation Process Managed by Parties*

#### Objectives

The scheme puts the general management of the process in the hands of the parties. This allows them to cooperate, to minimise their costs. If one party does not cooperate, then the Mediator can start assigning proportionally more of the ongoing costs onto them. They would be made immediately aware of the costs that are running up on their bill, to encourage them to take remedial action in their approach to the Mediation. This transparency and rapid feedback of what is happening prevents the sudden terrible expensive surprises that occur in the present familycaught system. If one party believes that the Mediator is against them, they can appoint, at their own cost, an additional Mediator. (If the applicant party is happy with the additional Mediator, they might then terminate the original Mediator to reduce their own costs, although they could call them back, if the need arose.)

Negotiation is largely steered by parties, at the speed required by the parties, with input from a mediator(s) chosen by one or both of the parties, to

- a. indicate where additional information is or may be required from either party, particularly if it appears that the children's interests have not been sufficiently protected,
- b. provide additional options or variations for consideration of parties,
- c. indicate on the basis of information provided so far, what a likely judgement would be (when there is sufficient information that this can be sensibly indicated),
- d challenge the parties if it appears that they are not negotiating in good faith, to produce evidence to back up their claims or withdraw some of their claims,
- e set suggested date to return their next Proposal, or to schedule next meeting from dates offered by both parties in telephone discussion with the parties,
- f advise the parties, if further mediation skills or professional advice are suggested or recommended and where these might be obtained from,
- g where warranted, make independent enquiries to verify urgency and information claimed, then to forward application to court for short or no notice hearing.

As the parties can select the Mediator of their choice and can change the Mediator throughout the process, this aligns the Mediator with the parties interests. As the parties will be paying a substantial fraction of the mediation costs, they have a direct incentive to use the Mediator's time productively, to minimise their own costs. If one party has resolved all outstanding evidence issues, to the Mediator's satisfaction, then the Mediator's ongoing costs will not be falling on them, so this provides a constructive incentive to negotiate constructively and in good faith.

The Mediation process should improve the negotiating skills and knowledge of the parties, so that future disputes will generally be resolved at lower costs. Generally parties underestimate the amount of time required to research the options available to them and check on all of the practical issues that arise. Skilled Mediators should be able to assist parties, by making suggestions of options, where and how to gain information to check on the issues that need to be resolved.

The Mediator would be required to certify that without notice applications had been sufficiently investigated and were based on real evidence. Whilst the present familycaught claims that lawyers presently serve this function, in practice many lawyers don't honour this responsibility and the familycaught does not enforce any accountability onto these lawyers. Whilst profitable for the legal workers, this failure to honour this duty imposes high costs onto the community. In checking on claimed evidence, the Mediator would make direct contact with family members and professionals associated with the family. By making best use of available evidence, the process will proceed more reliably and deliver more successful outcomes. (The same is possible for the present familycaught, but as their personal interest is in conflict with the applicants, they don't use these obvious possibilities - they don't obey the Best Evidence Rule!)

## Process and Clarification of Issues and Evidence

One (or both) parties apply to Family Court to start mediation process, with option of court hearing if unable to make voluntary agreement. Their application is on a standard form. When making an application, the applicant may select a Mediator of their choice. They can choose by price, reputation etc. If they hope to speed up the mediation, they may choose a Mediator who has a reputation for supporting the general interests of the respondent. (They could also choose a Mediator with a reputation for supporting their own personal interests too, as long as they are willing to pay both.)

Court Registrar assigns a Mediator if the parties have not already made a selection. If application appears straightforward or urgent, then application is copied directly to other party and to the Mediator. If Registrar considers the application to be vexatious or containing perjury or inflammatory content, then Mediator is assigned and will discuss application with the applicant, before sending the review to other party. This allows the Mediator to discuss with the applicant and persuade them to issue a new application, or to satisfy the Mediator that the application is based on facts.

The Mediator will only forward his review to both parties, when he is satisfied with the application. If the applicant agrees, then Mediator may discuss some issues with other family members, to verify the information in the application as being correct. Then the updated application and Mediators initial review is forwarded to the respondent, requesting their response. The mediator will set a date by which a response is required.

On receiving the response, the Mediator can then choose between:

Telephone discussion with one or both parties, possibly requesting evidence or affidavits of support

Meeting each party separately, or together,

Requesting further proposals from one or both parties, similar to previously with a recommended date to return their next proposal.

If their Proposal appears to be emotional or contain psychiatric issues, Mediator may offer counselling to one or both parties or psychological or psychiatric evaluation. This offer may be entirely voluntary, or may be with warning that if the case proceeds to hearing, that this would probably be recommended to the judge.

The Mediator may suggest that expertise outside his own is required and suggest that further mediation services be obtained, either by subcontracting further expertise, or by appointing a new mediator with the required expertise to take over. (Later the Mediation could be passed back, if the parties see this as appropriate.)

The respondent may accept the applicant's or registrar's choice of Mediator, they may add another Mediator if they wish, at their own cost. If the negotiations are proceeding to the satisfaction of both parties, after the first Mediator's Review, they can negotiate directly and leave out the Mediator, until they really require his services. This freedom of action allows parties to minimise their own costs, by negotiating in good faith.

The time required to assemble the evidence would be largely that of the parties themselves, with checking and advice from the Mediator and the other party.

If one party wishes to jump out of the Mediation process to a court hearing, they could apply to the court registrar. If the Mediation process is continuing, the Registrar would view the Mediator's reviews and if the review indicated that the party making application to the court had satisfied the Mediator that all necessary evidence had been made available to support the application made to the court, to the Mediator's satisfaction, then the earliest possible hearing date would be allocated. Due to the careful prior examination and challenging of evidence, relatively little hearing time should be required, if personal appearance is necessary at all.

Otherwise, they would be told to complete the process of satisfying the Mediator that they had provided sufficient information to support their application. This jump out should be sufficient to deter the other party from delaying in participating in the Mediation. If they drag their heels, they could later be dragged into court relatively unprepared. If the Mediator believes that it is unfair to progress the hearing that quickly, they could recommend sufficient time for that party to prepare themselves, to a 3 week maximum, unless the issue is clearly urgent.

If parties are well prepared (and use EMAIL), successive Proposals could be 2 or even maybe 1 day apart. If more time is required, to gather supporting information, analyse options, discuss with employers, then the Mediation will proceed more slowly, as is required to carry out the job competently, without just guessing through important issues.

An agreement that is carefully thought out, appropriate to this particular group of people and their life circumstances, aspirations and obligations and where both parties have a clear and similar understanding of the agreement made, is likely to work in real life.

The agreement would provide for long term monitoring and if required supervision, to keep the agreement working.



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Also, as some consideration to variances alerts both parties that it will require work from both parties to profitably handle the unforeseen events which unfold in real life. This consideration also provides an indicative framework to assist in enforcing the agreement. For example, if a variance occurs, that was not documented in the agreement, then the documented variance and the pre-agreed resolution helps to guide the mediator as to how to enforce the agreement, if the aggrieved party is not happy with the response of the party responsible for the variance.

## Negotiating in the Shadow of a Court

Many separating parents successfully negotiate without using familycaught services in any way. Parents who fail to resolve their issues, without using court services, are usually characterised by one or more of the following issues:

1. father has unrealistic expectations of something
2. mother has unrealistic expectations of something
3. father has psychiatric problems
4. mother has psychiatric problems
5. life issues that make the parties proposed solutions mutually exclusive for some reason

Most of the issues above relate to lacking knowledge about available options or skills to handle the situation. Many of these issues can be greatly helped, if not solved, by provision of information or skills, through the mediator or by skills training arranged through the mediator. These issues are somewhat time consuming and thus to be successful, must be performed by people whose salary expectations make it realistic for them to offer services at a cost acceptable to families in distress. Also, it is necessary for mediators to use appropriate tools and technology, rather than - for example - to have a judge try to show basic family budgeting to a slow learner separating couple.

When negotiations are conducted with both parties having recourse to a Court, then the parties' knowledge of what is the likely outcome, should the case be disputed in court, will be a major factor in how efficiently the negotiations are conducted. Efficient and constructive negotiations require accurate knowledge, if not by the parties then at least by the mediator.

If the parties have poor knowledge of the likely outcome in court, then the negotiations can only be inefficient and fraught with problems. This only increases the potential income of legal workers involved in the negotiations (conflict of interest). If the parties do not have confidence in the skills, values, fairness of the judges, then this also corrupts the negotiation process and further increases the possible income of legal workers (conflict of interest against the interests of the child).

Where one or both parties perceive that they can receive unfair advantage by recourse to a court hearing, then good faith negotiations are very unlikely to work.

The critical word is "perceived", even if the reality is that outcomes after a court hearing are usually poorer for both parties. Even if say women tend to get an unfair advantage, the relationship damage often results in partial or complete withdrawal of the father, largely or completely neutralising the advantage gained in the court hearing. If parties can see the realities of these effects, then the good faith negotiation can even work in the shadow of an irrelevant or incompetent familycaught process.

Psychiatric issues frequently play a part in a party having unrealistic expectations. If these issues are not directly addressed, the disputes resolution process will often be misled and fail to come to a solution that is workable for both parties. In these situations, what a party asks for, may be very different to what they want. If a judge gives this party what they want, the judgement will not meet the needs of either party and is guaranteed to fail in the real world. At present, such failures are never fed back to the judge that made the judgement, thus they will rarely learn from their mistakes. Many parties are too reactive, they respond too quickly at the sight of problems, where it is more productive to hold one's mouth, analyse the issues and then respond when there is sufficient information for the response to be constructive. The Mediator should be able to help the parties to control any over-reactive tendencies. This provides valuable learning, to help the parties to negotiate on their own in the future.

Commonly, women have a more accurate, if a little overconfident view of how they are likely to go in Family Court. Men usually have little idea of how poorly they are likely to be treated in Family Court. Thus both parties are poorly informed about what really goes on in Family Court. This is a recipe for adversarial dispute, to the personal profit of legal workers (conflict of interest against the interests of the children).

Many lawyers who don't work in Family Court, have received the shock of their lives, when they have been forced to deal with Family Court. It seems that access to complete and non-misleading information about what happens in Family Court can be a problem for lawyers too.

(a) the familycaught operate successfully and reliably at solving family problems. (Given the value inefficiency, due to its very high wage level, familycaught can never be a cost effective solution provider for families, even if it did have relevant knowledge and skills, which it presently lacks.)

(b) outcomes from the Mediation process are visible to people approaching or considering approaching Mediation.

To be maximally useful, this feedback should cover short term and long term outcomes and give sufficient of the input information to be useful to parties, wishing to see how relevant this outcome report is to their own situation. If this feedback process can be effective and cost effective at meeting the needs of separating families, then mediation can even be effective in the shadow of an ineffective, unskilled, erratic and unreliable familycaught, as it is in the parties own interests to resolve the dispute in a manner that will allow them to work constructively together to parent the children. Mutual support is worth more in the long term than gaining a short term advantage from abusing the weaknesses of a court and as a result losing the support of the other parent. It is still worthwhile to repair the familycaught process, as good money is being paid for these judges and some value should be returned to society by these people.

Note that this feedback is a little similar to court judgements, with the exceptions that court judgements don't necessarily reflect the input information supplied by the parties (ie the judge could have "found facts" wrongly) and judgements are essentially only a very short term outcome.

Judgements don't in any way reflect the long term outcomes to the parties. It is the long term outcomes which are most useful to parties entering Mediation. These can be made available, through the followup agreement supervision process. Note that the success of the Mediation process relies upon the public having accurate, relevant and reasonably complete information about their options. The present familycaught process tries to prevent people from gaining from other people's experiences, thus preventing the public from improving the familycaught process. It does this through publication prohibition and refusal of access to both family and other people's hearings.

**The Family Court Matters Bill provides mediation, but this will never be successful or economical in the shadow of an unreliable and incompetent Family Court. The first step required, is to address the skill and values problems in Family Court.**

## **Applicant and Respondents Form**

Requested date for next submission of Proposals

Primary focus of application

Is this Proposal without recourse, or with recourse.

If without recourse, the writer may later declare the Proposal to be with recourse. (Once declared as with recourse, then this cannot be later withdrawn. With recourse means that, if this application is later forwarded for a hearing, this proposal and the associated Mediator's Review will be forwarded to the court. This is essentially an act of good faith and allows this part of the progress of the Mediation to be visible on the court file as proof of some degree of good faith and constructive negotiation.)

Proposal for Parenting Plan

Proposal for Financial Plan associated with above

This effectively negotiates financial support alongside child support, alongside adjustment for variances in finances.

Explanation of why this plan has been chosen

Optional - Values that help to explain my selection of this Plan

Problems that I may encounter with this Plan

What options do I have to manage these problems

Highlight especially any assistance or tolerance that may be requested from the other parent, in this situation.

Problems that other party may encounter with this Plan

Highlight especially any assistance or tolerance that may be requested by the other parent, from the writer of this Proposal, in this situation.

What options does she have to manage these problems

My comments on other parties most recent Proposal

My challenges to their facts or information

Identify facts in dispute and suggest what evidence should be shown to resolve this issue.

Witnessing and Support

Any supporters or witnesses comment on the facts included above, to show whether they support these as being truthful.

Witnesses sign paper original, which is to be posted in. If parties want speedy resolution, they can EMAIL in their form and follow up by posting the signed copy to Mediator (who will confirm their receipt to the other party by EMAIL).

**Mediator's Review Form (1 for each Applicant or Respondent Form)**

List of points of agreement

List of remaining or new points of dispute

Comments on Proposal

Comments on constructiveness of approach

Comments on what supporting evidence appears to be necessary, to support claims made  
This may include a request for direct access to family members for confirmation of claims made.

Request for other information to be supplied that is relevant

Request to consider other similar alternatives to their proposal or to consider obtaining further Mediation skills on the following issues.....

My charge for reviewing this proposal, broken down into direct contact hours, telephone contact hours, preparation time and disbursements.

## **Negotiation of Proposed Enforcement Arrangements**

The existing familycaught is very reluctant to enforce its own orders. The major reason for this, is that most orders are not well enough thought out, to allow them to be enforced, without completely re-hearing the case. This builds in unwarranted extra legal costs and time delays usually so long, that the enforcement becomes nugatory anyway. (Why did it cost so much to get the original court order, when it isn't even good enough quality, to be able to be enforced?)

For mediation to work, there is a need to have judges who have the stomach to enforce caught orders. . It seems that this can only be achieved by total replacement, which also would allow for reduction of terms and conditions, so that an efficient and cost effective service could be provided. With effective Mediation, the numbers of judges required would probably drop to well under 50% of the present featherbed muster

For enforcement of Mediated agreements to be workable, it is necessary to check that they can be practically enforced, before the negotiation process is signed off. This way, both parties should have the same expectation that the agreement can and will be enforced, efficiently and effectively, at the lowest possible cost. This does require more work, to set up the agreement in a manner so that it can be quickly enforced or alternatively, a pre-arranged compensation will be forfeited without delay from a prepaid bond or security over equity in their house. Negotiation of adjustments for degrees of breach, gives a very blunt and clear communication of the parties values and positions. This helps to ensure that the negotiated outcome is viable for both parties, without one party taking for granted that they can gain dishonest advantage by planned deliberate breach, as the existing familycaught judges encourage by being well known for their tolerance of repeated breaches of familycaught orders.

By aiming at agreements which are efficiently capable of being enforced and checking these issues before the agreement is signed off, should result in far fewer agreements and orders being breached in the first place. This approach builds trust between the parties, which is far preferable to the familycaught style of orders being breached more often than they are ever complied with. Trust and honesty give the parties and their children the best protection.

## Comparison with present familycaught practice

This process gives the applicant and respondent useful feedback on how their proposals are being viewed, by someone with experience with caring for children, family finances and work obligations and allows for challenging of evidence as an ongoing process (as against in familycaught where evidence is essentially only presented in the final hearing - thus both parties can use ambush).

As the range of issues that need to be covered is wide, the Mediator can call in other Mediators with the experience and expertise required, when required. In addition to the issues mentioned, emotional and psychiatric problems can similarly be addressed, within the voluntary mediation process, or this can be foreshadowed if it is likely to be required prior to a formal hearing. It is important that the main Mediator stay focussed on the primary issue of the application and that side issues (where important) generally be dealt with relatively separately.

Where there are discrepancies or deficiencies in evidence, the development of evidence is visible to both parties and useful feedback will be given at an early stage to both parties. This is what is known as good faith bargaining. Although the Family Proceedings Act provides for this, the familycaught judges simply don't work this way, mainly due to the conflict of financial interest and also due to their training and experience being in adversarial hearing combat.

This process of building up evidence that is relevant and sufficient for making a formal determination is provided for in Family Proceedings Act, but not implemented by present judges. This is what causes the erratic and unreliable performance of the familycaught.

If the parties require time to understand and cross check the other's evidence, this mediation process will give them sufficient time to resolve evidence issues, without incurring unproductive costs. This should greatly assist the parties to resolve the dispute, to their mutual (and their children's advantage), without needing to go to a court hearing. (Essentially the objectives of the Family Proceedings Act 1980 would be achieved, but with minimising of the need for legal workers and the associated non-productive legal "fees".)

As the Mediation proceeds, the with recourse Proposals, Mediator's Reviews and any evidence produced in response to challenges of claimed facts, builds up a dossier which should greatly facilitate providing a complete set of relevant facts to a court hearing, along with clarified issues for determination. Considerably more time would have been spent on checking and challenging the relevant facts, than occurs in present illegal adversarial type familycaught hearings.

This "repeat until sorted out" type of procedure (inquisitorial) prevents evidence ambush, which the present familycaught rules should prevent, but which the present judges allow to occur. If a hearing should result, it will more likely be based on a correct understanding of the facts, than is the case for present familycaught adversarial hearings.

This Mediation process puts most of the costs onto the parties, in terms of their own time. **This gives them a strong incentive to negotiate in good faith and productively.** The Mediation costs will be lower than present familycaught judge costs, as their wages are likely to be about \$75 per chargeable hour compared to \$420 per chargeable hour demanded by judges.

In most cases, one party may have resolved all issues between themselves and the Mediator, so that there would be no need to submit further Proposals and Mediator's Reviews, unless something in the other party's Proposal required changes. This party would simply be receiving copies of the other party's Proposals and Mediator's Reviews, at no charge to themselves. This gives parties a reasonably strong incentive to get to the point and to bargain in good faith. By doing so they reduce their costs financially, in time and conserve their remaining available Government subsidy for the future.

The agreement would provide for long term monitoring and if required supervision, to keep the agreement working. This is in stark contrast to familycaught, where the familycaught takes no interest in supporting the agreement that they have forced onto both parties. It is this absence of long term interest, which protects the familycaught from learning from it's mistakes!

This process puts most of the work onto the parties and puts work to the people who have access to the necessary information and skills. It allows the parties to largely manage the process, including the associated costs, as they see fit. This avoids the unmanaged conflicts of interest that occur in the existing adversarial familycaught and allow it to run up large expense at the cost of the Government and the parties.

In doing this, the parties would effectively receive low level training in negotiation, which should improve their chances of not having to come back to a formal procedure. Conversely, the present adversarial familycaught process does not enhance negotiating skills between the parties. Usually the present familycaught process damages negotiating skills between the parties.

## **Government Subsidy of cost of Mediation**

### **Couple with children**

Government subsidy available at \$1,500 after separation, plus additional \$500 per additional year for up to 4 years, payable at up to \$30 per Mediator's hour. (The Mediator's charge rate for subsidised hours must be the same as their charge for non-subsidised hours.)

### **Couple without children**

Government subsidy available at \$1,000 after separation, plus additional \$250 per additional year for up to 4 years, payable at up to \$30 per Mediator's hour. (The Mediator's charge rate for subsidised hours must be the same as their charge for non-subsidised hours.)

It is expected that many Mediator's would charge in the region of \$70 per hour. Some people might be willing to pay their lawyer to be Mediator, but might have to pay a higher rate.

It is possible that a greater subsidy could be paid for beneficiaries. However, beneficiaries should have the time to do most of the work themselves, to minimise their use of the Mediator.



## **Help Parties to Gather Best Quality Evidence**

The Mediator can guide the parties to identify what types of evidence are probably available, how to obtain the evidence and present it to the family caught. A little assistance should greatly help the parties to bring good quality evidence to court and to guide them to make sure that evidence is produced and saved as negotiations proceed. This also gives early feedback to the parties, about how well they are putting their case together, to avoid sudden and painful surprises at the end of the mediation or court process.

## ***Allow men to claim protection under DV Act***

The DV Act 1995 is already worded gender neutral, so the only changes needed would be the "judges".

## ***Apply Costs Rules to balance Incentives between parties***

Traditionally the losing party may be required to pay part of the legal costs of the winning party.

This process can seriously inhibit people with less spare cash from taking actions to court or even from defending actions. For this reason the family caught has typically refrained from applying costs rules.

This can then result in the opposite problem, that people with legal aid or very strong financial positions can have more scope to abuse people who are working on a low income and paying tax, with no help from legal aid.

These issues need to be constructively addressed, particularly when women can bring DV Act applications at no cost and no sanction for bringing unfounded and perjurious actions, while the defendant can be blackmailed into large legal defense expenditures.

To redress these issues is against the financial interests of legal workers, both mouthpieces and judges. Therefore, the application of costs rules should be by employees who do not have any direct financial interest.

## ***Quality of Legislation and Rules***

Good quality legislation and subsidiary rules are clear and straightforward to follow.

They are value neutral, as far as practical but where values are critical, they will be spelled out clearly.

To improve the operation of the Family Court, we should be looking to streamline the legislation and rules and make their operation able to be understood by lawyers and judges and easily understood by the public, in particular parents.

Good quality legislation arises through a broad understanding of the issues and the full range of available solutions. To draft clear, workable, constructive and socially valuable legislation requires a clear understanding of all of these alternative solutions and how well they will survive the tests of the future. Viewpoints of families need to be considered, every bit as much as the viewpoints of the practitioners who work these Acts.

Drafting land conveyancing legislation is not completely straightforward. The Torrens land registration system is credited with giving security of title, combined with an efficient and reliable method of transferring clear title. This allowed land to be purchased by the people who could give the highest value for it and led to a highly efficient and active marketplace.

Family legislation involves wider sets of issues than land conveyancing but similar concepts of legislation quality apply. When legislation is understood by the citizens, they can arrange their affairs without much need of legal input.

The Guardianship Act 1968 and Care of Children Act 2004 are reasonably straightforward. The problems arise in Family Court judges using meanings for words outside of their normal English dictionary meaning, to allow them to act far outside of what was intended by Parliament.

Good quality legislation is clear and straightforward, so that people may arrange their lives within it, without "needing" recourse to the courts.

Lack of clarity in legislation creates disputes, which generates far more income for legal workers than clear legislation (conflict of interest).

For citizens to understand legislation, it needs to be efficiently accessible to them. At present, legislation and rules are now efficiently accessible to citizens, but judgements are generally not easily or cheaply or efficiently accessible to citizens. The NZ Government has run "Citizens access to justice" investigations several times through the last 30 years, but more has been spent on talking than doing – as it cuts into commercial interests of legal workers (conflict of interest).

The Bill of Rights Act? requires reports on Bills before they are passed into legislation. This is lip service to legislation quality assurance, but these processes have not yet developed into productive tools in the NZ Parliament, as judged by international standards.

## ***When people take what they have not earned by Gary Judd legal worker***



**Gary Judd**

**By GARY JUDD, QC an Auckland barrister**

Before one seeks to prescribe a remedy for the ills of society it is necessary' to identify the ills of which one is speaking and their cause. Once the cause is identified, the remedy follows inevitably: remove the cause.

Different people will perceive the ills of society differently. However, few would disagree that we should be concerned about the increase in offending, escalation of violence, rise of racial tensions, growth of gangs, child abuse and so on.

Societies have always had members who seek to take what they have not earned by force or fraud in all their multifarious variants. This includes not just property but such things as sexual favours. The concern which exists today is the perception that over recent decades unpalatable aspects of society have become more prevalent. The evidence seems to support the perception. Dependence on the state has now become institutionalized in certain sections of our society. There are families in which for several generations members have not known a way of life which does not involve receipt of unearned support.

Having children is seen as a passport to enter the same society as that inhabited by parents and grandparents, a society where what is received is not earned but is given by the state.

While the ills of society are not confined to this section of society, that is where they overwhelmingly predominate.

What the members of this section of society receive is not earned, but is demanded on the basis of "need." The demands are not necessarily always made by them but by others motivated by altruism or the desire to gain political support.

This delivery of unearned support **represents a transfer of resources** from productive members of society to nonproductive members of society.

Over the past 60 years or so, in particular, a tide has been flowing which more and more rewards the non-productive for being non-productive on the basis that these non-productive people are in need. The tide has not flowed constantly. Sometimes it has surged, sometimes it has slowed, sometimes it has even ebbed.

It may have ebbed to some extent or at least in some aspects in the past few years but it appears likely to flow strongly in ensuing years unless there is a realization that what is happening has the potential to break down society completely. It is essential that steps be taken to reverse the flow.

The delivery of unearned support provides an institutionalized incentive-to be a non-producer, to take without earning. It creates an environment in which to take without earning is morally acceptable.

In the welfare state, the taking is done through the state but, if it is permissible to take through the instrumentality of the state, it must seem likewise to be permissible to take by individual action. It becomes implicitly permissible to take property by theft, robbery, fraud and extortion. It becomes permissible to take sex by force, because this is a perceived "need" which for the taker can only be met in that way.

A political system which proclaims that unearned "needs" must be met is one which nurtures proclivities towards theft, robbery, fraud, extortion, rape and abuse.

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Logically, this system cannot work in the long run. Taken to its logical extreme the demands of the non-producers will eventually overwhelm the ability of the producers to provide.

The remedy for the ills of society which is usually proclaimed is "more of the same"—that is, we take more from the productive members of society and give more to the non-productive members of society.

This is what we have been doing for the past 60 years. Any rational evaluation of the evidence would indicate that this remedy for the ills of society does not work. On the contrary, what we have been doing is a cause of the problem.

The remedy is clear. That cause must be removed.

We must stop giving to those who have not earned.

We must remove the incentives which reward non-producers.

We must do what we can to transform non-producers into producers.

We must cultivate an ethos which insists that "need" is not a justification for receipt of benefits, that benefits must be earned, and that the self-esteem which flows from those circumstances is infinitely to be preferred.

Murray Bacon's comment:

Mr. Gary Judd's comments, in my opinion, could also be usefully applied to other beneficiaries of governments funds, such a familycaught judges. I do not believe that these people are delivering **good quality**, cost effective service to the public. **The result is that each of these people may be taking much more out of society, than DPB beneficiaries, with less value returned. I recommend a Commission of Enquiry into the operation of familycaught, to publicly address these issues and force through improvements.**

## ***Managing Conflicts of Interest so they are not a barrier to Courts delivering Good Quality Cost Effective Service***

When a conflict of interest is NOT managed appropriately, then actors have (possibly hidden) incentives to serve people other than their ostensible customer. When actors act on their conflicted interest, they fail to deliver the proper quality and level of service to their customer. Later, as customers become aware of the conflict of interest, they are likely to become severely aggrieved and if there is no proper redress - eg trying to sue a legal worker - then they will be strongly tempted to sort the situation out in the real world, by broken bones, crushed skulls and spilt blood.

It is far better to make sure that conflicts of interests are competently managed, so that these problems never arise. This is not being competently done, by the present chiefs of court judges. They are simply trading by publicly claiming their integrity and skills. This smoke and mirrors approach does not address the real issues and complaints from the public are simply being ignored, as long as they can get away with this type of behaviour.

The following conflicts of interest need to be managed:

Parliamentarians who have worked as lawyers, taking part in debate and votes.

While they have some specialised knowledge, their personal conflict of interest is hazardous to Parliament protecting the interests of family consumers and protecting the taxpayer's interest. When non-lawyer Parliamentarians stand back from taking a vigorous part in these debates, they are abrogating their duty to citizens and especially to all of our children. Non-lawyer Parliamentarians must look carefully at how well they are protecting citizens, from closed-shop lawyers.

Good quality legislation is clear and straightforward, so that people may arrange their lives within it, without "needing" recourse to the courts. Lack of clarity in legislation creates disputes, which generates far more income for legal workers than clear legislation (conflict of interest).

For citizens to understand legislation, it needs to be efficiently accessible to them. At present, legislation and rules are now efficiently accessible to citizens, but judgements are generally not easily or cheaply or efficiently accessible to citizens. The NZ Government has run "Citizens access to justice" investigations several times through the last 30 years, but more has been spent on talking than doing – as it cuts into commercial interests of legal workers (conflict of interest).

If the parties have poor knowledge of the likely outcome in court, then the negotiations can only be inefficient and fraught with problems. This only increases the potential income of legal workers involved in the negotiations (conflict of interest).

### **Hearing of Complaints about Legal Workers**

The legal system from end to end, has always shown stellar arrogance, as it knew that it ran the complaints processes, with oversight by only wastefully expensive and profitable judicial review. Arrange that judges and lawyers are managed and supervised by people drawn from outside of legal profession and who are not subject to the conflicts of interest that the judges are exposed to.

Today, all of the productive professions have oversight by people outside the profession.

Supervision by a group of people providing at least some oversight from people outside the profession is given to limit the conflict of interest on the part of people within the profession on the supervisory panel.

### **Principal Family Caught Judge Management of Frivolous Litigation**

At present, the Principal Family Court Judge has a personal financial conflict of interest, in that his pecuniary advantage lies in building the empire of Family Court and of legal workers in general. This conflict of interest should be clearly monitored by Parliament, or better still the management of family court judges should be by a manager not subject to this conflict of interest. This issue is the single issue offering the largest financial savings for Government and citizens.

### **Principal Family Caught Judge Management of Research**

The judges who manage the judiciary fail to protect honest respondents and Government Legal Aid ie the public purse, from unnecessary and frivolous legal actions brought by legal workers. This serious conflict of interest costs the Government several

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\$100 millions per year and seriously financially damages families. Although they speak publicly about putting the interests of children first, they put their personal and legal worker's interests first. Justice would be better served by managing unnecessary "legal actions" paid for from the public purse. This would then allow the Family Court to meet its commitments within its existing budget, possibly even reducing the cost of this court.

Law Commission and Justice Department sponsored "research" consists mainly of talking to legal workers, with minor input from "specially selected" customers. By avoiding professional quality sampling (and the comments of the broad range of customers), the resulting research may be manipulated, by the employers of the researchers (conflict of interest). The Justice Dept research lacks professional credibility, it is based mainly on the viewpoints of legal workers. This submission is focussed on the viewpoint of giving families an effective disputes resolution service where value exceeds the cost, at a cost within the sensible budget of hard working families.

#### Judges

The primary problem in Family Court relates to the tolerance and fostering of perjury. (This eats way at the integrity and productivity of all NZ courts, but the problems caused persist much longer when they impact on family relationships in Family Court. Perjury generates more "legal work" and this profits all legal workers. Instead of honouring their ethical "responsibility" to the court, many legal workers encourage perjury. This is a pernicious conflict of interest and it will only be honoured when the legal workers complaints hearings are supervised from outside of their profession, similarly to all of the productive professions.)

Thus, it is more efficient for the child, to impose high standards for behaviour, accountability and responsibility onto both parents. To do so, would generate less adversarial spirit and thus less income for legal workers (this being another conflict of interest against the child's best interests).

## References

Domestic Violence - Improving Police Practice NSW Ombudsman's Report

## **Extracts from documents referred to in the body of Submission**



***DV Program Evaluation Chapter 04 Lessons from police arrest studies******EXPERIMENTAL DESIGN AND ALTERNATIVES*****What Are the Lessons of the Police Arrest Studies?**

Joel H. Garner and Christopher D. Maxwell

**SUMMARY.** The six domestic violence police arrest experiments and several precursor studies stand unique in their research contribution to criminology and public policy. Together, these studies have significantly informed the debate about the deterrent effects of criminal justice sanctions and about the importance of how police can respond effectively to domestic violence. The strong methodological rigor of the six arrest experiments was a notable accomplishment, and set new standards for future criminological research. Early reviews synthesizing many results from the six arrest experiments typically concluded that the deterrent effect of arrest was not significant, however, these reviews generally did not meet the methodological rigor of the five replication experiments. Two recent attempts using different approaches for systematically combining results across multiple studies have concluded that there is a significant deterrent effect from arrest. This finding is variant from early reviews. Based upon data gathered from victim interviews, these two studies suggest that contemporary policies requiring preferred or mandatory arrest may be providing protection for victims though there is little change in the prevalence of police response over time. These studies have also taught us that methodological rigor is required throughout the scientific process, and not just during the data collection and analysis stages. The authors conclude that for several reasons there will likely be no further research testing for the effect of arrest on domestic violence and that current debate concerning how other aspects of the criminal justice system should respond to domestic violence seems less willing to be informed by the rigorous research and experimentation.

**KEYWORDS.** Deterrence, spouse assault, victim interviews, National Academy of Sciences, National Institute of Justice

***INTRODUCTION***

In reviewing what is known about the effectiveness of treatment or prevention programs in the area of domestic violence, the National Academy of Sciences (Chalk & King, 1998) surveyed over 2,000 studies published between 1980 and 1996. Of these studies, the Academy identified only 114 that (1) involved an intervention designed to treat some aspect of child maltreatment, domestic violence or elder abuse, (2) used an experimental or quasi-experimental design, and (3) measured and used violence as an outcome measure. Among the roughly six percent of the published studies of sufficient methodological value to warrant consideration by the Academy were seven studies that tested the deterrent effectiveness of the police making an arrest (or issuing an arrest warrant) for misdemeanor assaults against a spouse or intimate partner. These are the "police arrest studies" reviewed in this paper.

The first of these seven studies, the Minneapolis domestic violence experiment (Sherman & Berk, 1984a), is among the most visible (Sherman & Cohn, 1989) and highly cited research articles in criminology (Cohn & Farrington, 1996). That experiment found that when suspects in misdemeanor spouse assault incidents were not arrested, the prevalence of official recorded re-offending within six months was 21%; this rate was 50% higher than the 14% re-offending rate of similarly situated suspects who were arrested. Similar results were obtained when re-offending was measured by interviewing victims.

The published results of the six other experiments into the effectiveness of arrest (Black, Berk, Lilly, & Rikoski, 1991; Dunford, Huizinga, & Elliot, 1989; Hirschel, Hutchison, Dean, Kelley, & Pesackis, 1991; Pate, Hamilton, & Annan, 1991; Sherman et al., 1991) generated a variety of measures, analyses and inconsistent findings, leading the National Academy to conclude that "arrest in all misdemeanor cases will not on average produce a discernable effect on recidivism" (Chalk & King, 1998, p. 176). Our substantive assessment of the evidence available to the Academy is similar to their conclusion but we have also argued (Garner, Fagan, & Maxwell, 1995) that there is insufficient evidence in the published findings of these experiments to assess the effectiveness of arrest as a deterrent to spouse assault.

The nature of our disagreement with the Academy's report is derived from three considerations. First, not all the possible findings from these six experiments (known collectively as the Spouse Assault Replication Program, or SARP) have been published. Thus, the published evidence is only a small proportion of the complete set of possible findings. Second, while each of the SARP experiments uses multiple measures of violence as outcomes, there is no single measure of violence used consistently in the published reports. For instance, the Minneapolis experiment counted threats of violence as violence; none of the subsequent publications define violence as including threats of violence. In addition, the published research uses a wide variety of analytical approaches and it is difficult, if not impossible, to separate the diverse findings from the diverse measurement and analytical techniques reported (Garner et al., 1995).

Our third consideration cuts to a basic but often an ignored tenet of science—the reproduction of findings by independent scholars. Despite the fact that the raw data from these experiments have been publicly archived for more than five years, there are no published reports by

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independent scholars confirming the original results of any of these experiments through secondary analysis of the original data. This is a potentially serious threat to establishing the reliability of any findings about the deterrent effectiveness of arrest and, we suspect, an often unrecognized threat to many other criminological research findings (e.g., Blumstein, Cohen, & Gooding, 1983; Laub & Sampson, 1989; Visher, 1986).

This paper is a review of the design, implementation and results of these same experiments; in addition, we report here the results of a recently completed reanalysis of the raw data from five of these experiments that directly addresses the problems associated within the inconsistent use of different measures and analysis. Our multi-site reanalysis uses more consistent methods and measures and brings higher methodological standards to assessing the police arrest studies. Our analysis provides a more favorable assessment of the deterrent effects of arrest than the Academy's or any other qualitative or quantitative review of the published literature on the police arrest studies.

### WHAT ARE THE POLICE ARREST STUDIES?

For purposes of this review, we have identified a number of publications that we believe constitute the heart and soul of research on the deterrent effectiveness of arrest for misdemeanor spouse assault. These studies include the original reports on the findings of the Minneapolis experiment, the original reports on the six replication studies, and publications that reanalyze the data from one or more of these studies. Our selection captures those documents that derived findings about the effectiveness of arrest by analyzing the data about victims, suspects and police behavior directly from individual cases. Purposely excluded from our review are publications that involve commentaries on published findings from the police arrest studies but do not involve any original data analysis.

#### *Precursor Studies*

Our goal in this essay is to establish what we have learned (or should have learned) from this series of experiments. To determine what we know now that we did not know then, it is useful to review a

number of publications that can, in different ways, be considered precursors to the Minneapolis domestic violence experiment. Some of these precursors relate directly to research on alternative police responses to domestic violence; others relate to the changing standards for criminological research in the 1970s.

In 1968, the *New York Times Magazine* (Sullivan, 1968) reported on an innovative program in which 18 New York City police officers volunteered to be trained to use psychology to handle family crisis problems. A subsequent report was published by the then newly created National Institute of Law Enforcement and Criminal Justice (Bard, 1970). This research asserted the value of an alternative to traditional law enforcement approaches to addressing domestic violence. Bard and Zacker (1971) recommended that the police be trained in new ways to respond to domestic violence. In this program, the police would calm down the situation, separate the parties, listen to the concerns of each of the disputants and attempt to address the immediate problem that was underlying the current dispute. The police were also trained to give the victim a phone number to call to obtain information about a variety of social services. Arresting one or both of the parties was not part of this approach. This approach was touted as integrating the psychologist's knowledge of human behavior with the coercive authority of the law in a manner that promoted collaboration among the police and other social service agencies.

The Bard study had several important methodological characteristics. First, it involved the comparison of police behavior in two New York City precincts. In one precinct some of the officers were trained by Bard and in the control precinct no officers were trained in these new procedures. The experimental precinct was the predominantly African-American 30th precinct; the comparison precinct was the predominately Puerto Rican 24th precinct. Thus, the Bard design was a non-equivalent control group (Campbell & Stanley, 1966), a design with many known weaknesses. A second pertinent characteristic of the Bard study was that the primary outcome measure used was the number of assaults on police officers. Bard reported that during the experimental program there were no assaults on the 18 trained police officers. However, he also reported that there were two assaults against other police officers in the experimental precinct and only one assault in the entire comparison precinct. Thus, there were more, not fewer, assaults to officers in the precinct where the program had been imple-

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mented (Bard & Zacker, 1972, p. 74). Bard also compared the number of family related homicides in the two years before the implementation of the program with the first two years of the program. In the 30th precinct where Bard had trained 18 officers, the number *increased* from one to five (Bard & Zacker, 1972, p. 72). In the comparison precinct, the number of family related homicides remained constant at two over both periods.

Despite the weak design and results that indicated that the program had negative results on officers and victims, Bard's research was, in its day, quite influential. In addition to the visibility in the *New York Times*, between 1971 and 1976, the demonstration and testing divisions of the National Institute of Justice<sup>2</sup> spent millions of dollars paying officers overtime to attend training that encouraged the use of Bard's intervention program in more than a dozen police departments across the United States. Elements of the program were promoted by the International Association of Chiefs of Police and discussed positively in the widely distributed Law Enforcement Bulletin (Mohr & Steblein, 1976). Police Family Crisis Intervention had become a major, if not the dominant, law enforcement approach to addressing domestic violence. In 1976 a National Institute of Justice (NIJ) funded evaluation of six demonstration sites (Wylie, Basinger, Heinecke, & Rueckert, 1976) reported that the demonstration program had been implemented in widely diverse manners in each of the six sites. In addition, a pre-program/post-program time series comparison in these six sites revealed that family related assaults and arrests were up in two sites and level in the other four. Despite the evaluation's negative program findings, the evaluators advocated their own untested version of police family violence intervention training (Wylie et al., 1976). The lesson here is that, unlike drugs and medicines, Federal financial support for a social intervention does not necessarily mean that there is a body of knowledge supporting the efficacy of that intervention.

There is another study which, we believe, should be seen as a precursor to the police arrest studies. In a sample of domestic violence assaults and homicides over a two-year period, Katherine Milton and her colleagues (Police Foundation, 1977) reported that in 85% of the incidents the police had been called to the scene at least once before; in 50% of the incidents, the police had been called five times or more. These findings contradicted a common presumption that there was little that the police could do about domestic violence (American Bar

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Association, 1981; International Association of Chiefs of Police, 1967). The 1977 Police Foundation study documented that domestic violence was repetitive and highly visible to the police. What was not clear from this research was what the police should do. In the *Foreword* to that 1977 report, James Q. Wilson, Vice Chairman of the Police Foundation, reviewed the alternative policies available and asserted

At present we lack any reliable information as to the consequences of following the different approaches. Gathering such information in a systematic and objective manner ought to be a high-priority concern of local police and prosecutors. (Wilson, 1977, p. v)

### *A Methodological Sea Change*

Between the publication and dissemination of Bard's research and the 1980 funding and 1984 dissemination of the Minneapolis domestic violence experiment, there was a sea change in the nature of criminological research. In 1974, Lipton, Martinson, and Wilks (1975) reviewed the published research on effectiveness of rehabilitative treatments and concluded that "nothing worked." Their review was limited to treatments implemented in a correctional setting and did not include law enforcement programs like police family crisis interventions but, as a result of their very negative assessment, the ideological underpinnings for all treatment programs were shattered. In 1979, a panel of the National Academy of Sciences (Sechrest, White, & Brown, 1979) concurred with Martinson's substantive assessment and added detailed critiques of the methodological weakness of much of the published research on rehabilitation. The Academy's methodological critiques asserted that much of the prior criminological research had used unstandardized measures of recidivism, rarely had even roughly equivalent treatment and control groups, did not control for different times at risk, and failed to measure the delivery of treatment and control conditions. Although not explicitly addressed by the Academy, Bard's research did not meet any of these methodological standards.

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In another highly controversial arena, Issac Ehrlich's econometric assessment supporting the deterrent effects of criminal sanctions was included in the U.S. Department of Justice's *amicus curiae* brief supporting the constitutionality of the death penalty (Bork, 1974). The resulting substantive and methodological disputes over the value of criminal justice sanctions as an effective crime control strategy were addressed in a separate report by the National Academy of Sciences (Blumstein, Cohen, & Nagin, 1978). Among other issues, this Academy's deterrence report emphasized the value of experimental designs as a means to assess the impact of changes in levels of criminal sanctions (Zimring, 1978).

These highly visible public debates over the relative effectiveness of rehabilitation and of deterrence, and the Academy's repeated critiques of the methodological weaknesses of prior research provided support for the use of stronger research designs in Federally supported research at the National Institute of Justice. In 1979, NIJ created the Crime Control Theory Program and issued the first of many solicitations for research on rehabilitation, deterrence and incapacitation. Unlike prior NIJ research solicitations, this program was open to all and the review and assessment of research proposals were conducted by independent panels composed entirely of experienced researchers and not solely by NIJ management and staff. In 1980, the new Director of Research at the Police Foundation, Lawrence W. Sherman, submitted a proposal to the Crime Control Theory Program that called for a rigorous test of deterrence theory; the idea was to use an experimental design to assess the deterrent effect of arrest on the crime of spouse assault. The rest is history.

### *The Minneapolis Domestic Violence Experiment*

The basic history of the Minneapolis Domestic Violence Experiment is an often told story. The Minneapolis police department agreed to implement an experimental design, where one of three alternative responses to incidents of misdemeanor domestic violence-arrest, separation, or counseling, would be determined on an equal probability basis. Sherman and his colleagues collected and analyzed data from the experimental incidents, from official police records of the subsequent criminal behavior of the suspects, and from interviews with victims. The findings of this study were reported in a Police Foundation Report (Sherman & Berk, 1984a), in the *New York Times Science*

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Section (Boffey, 1983), in many electronic and print media (Sherman & Cohn, 1989) and in several peer-reviewed scientific journals (Berk & Sherman, 1988; Sherman & Berk, 1984b).

Much has been made of the methodological rigor of the Minneapolis design but two other comparisons with the prior research on police family crisis intervention programs are, we think, instructive. First, Sherman and Berk's study made victim safety, not police officer safety, the sole measure of success for alternative police responses to domestic violence. Following the Minneapolis experiment, victim safety is certainly the paramount and perhaps the only criteria for assessing the effectiveness of alternative police responses to domestic violence. Second, both reforms were based on research, were supported by NIJ, generated widely distributed reports, and received favorable media coverage. However, in the case of police family crisis intervention training, the favorable press reports came first (1968), followed by extensive NIJ promotion (1972 to 1975) leading up to a more thoroughly researched assessment (1976). In the Minneapolis study, rigorous research was conducted first (1981-1983), followed by media attention (1983), and peer reviewed publications (1984).

There are other, less well known, aspects of the Minneapolis experiment. First, the project was implemented in full collaboration with a Minneapolis based domestic violence coalition; in fact, the release of the initial findings of the experiment was set to follow the broadcast of the coalition sponsored documentary on domestic violence on Minneapolis public television. Second, the experiment was not implemented throughout Minneapolis but only in

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two precincts and among a small number of volunteer officers who had a major role in determining how the experimental design would be implemented. Third, unlike the Police Family Crisis Intervention program, the National Institute of Justice did not publish a single document on the study or its results. Neither did it hold a large conference to discuss the study's findings or fund a single demonstration program to promote the use of arrest. The visibility of this research was due almost entirely to actions of individuals outside of NIJ.

Sherman and Berk (1984a) employed two common scientific criteria in assessing the results of the Minneapolis experiment. First, they reported that differences between treatments were "statistically significant." Second, they emphasized that the analyses of official records were consistent with the results of the victim interviews. As Sampson

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and Laub (1993) have noted, tests of statistical significance are, technically, irrelevant since the underlying statistical justification for these tests assumes that the experimental incidents were drawn as a random sample of some population, which they obviously were not. These tests, however, are commonly used in non-random samples as a standard criterion for distinguishing real effects from spurious effects. The finding that the results were consistent across two measures was a less formal but perhaps more persuasive way of arguing that the results were real and not due to the selection of a particular source of information about subsequent violence.

A complete understanding of the Minneapolis experiment also requires a close reading of the original reports by the original authors and a reanalysis of the publicly archived data. For instance, the original reports (Sherman & Berk, 1984a, 1984b) analyze 314 eligible experimental cases; however, 16 cases for which randomized treatments had been assigned were excluded because "no treatment was applied or the case did not belong in the study" (i.e., a fight between a father and son) (Sherman & Berk, 1984a, footnote on p. 264). Second, the 314 experimental incidents were not analyzed as the treatments were randomly assigned; neither were they analyzed as the treatments were delivered. Rather the original investigators used an innovative technique to "correct" for the misapplication of treatments (Sherman & Berk, 1984a, p. 267), a calculation that has not been fully documented in any technical reports or reproduced by independent scholars. From the published reports by Sherman and Berk, it is impossible to determine the extent to which the direction, size and statistical significance of the original Minneapolis experiment depends upon the exclusion of 16 experimental cases or the use of statistical corrections for the misapplication of treatments.

These issues were addressed in Gartin's (1991) detailed attempt at the reconstruction of the archived data from the Minneapolis experiment (Berk & Sherman, 1993). Gartin generally confirms the original findings but found that the existence of statistically significant effects for arrest were dependent on data source or on the analytical models used. Gartin (1991, p. 253) reports that, despite considerable missing data problems, the "analyses reported by Sherman and Berk (1984a) are reproducible" but that the weight of the evidence "seems to indicate that there was not as much of a specific deterrent effect for arrest" as the results from the original reports seemed to suggest. Gartin's

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general confirmation of the Minneapolis results is a significant contribution to the scientific evidence and adds some reliability to the original findings. There are many experiments in criminal justice; there are few confirmations that the findings of those studies can be reproduced from the original data by independent scholars.<sup>3</sup>

We recount these details because we have learned that many commentators on the Minneapolis experiment appear to either (1) not understand basic research methods, (2) not have read the reports of this experiment very closely or (3) have chosen to describe the experiment in ways which do not conform with the actual events. For instance, the often repeated assertion that Sherman and Berk did not consult and collaborate with local domestic violence reform activists (e.g., Pence, 1998) is simply without a factual basis. There are numerous other errors and irrelevancies in much of the commentaries on the Minneapolis experiment, and the traditional recommendation that scholars rely on original source documents and not second-hand assumptions or corruptions about what was or could have been done seems particularly relevant to the literature on this experiment. The Minneapolis experiment is not above criticism. However, the rarely noted but *actual* exclusion of more than 5% of the experimental cases could as easily have compromised the rigor of this experiment as the often-noted *speculation* that officers who volunteered to conduct the research and helped design its protocols might have imperfectly implemented the random assignment. There is another lesson from the Minneapolis experiment. An earlier reanalysis of the Minneapolis data may have provided more reasonable expectations about how effective arrest alone would be as a treatment for reducing domestic violence. Such a reanalysis, however, requires the kind of hard work and scholarship that few commentators seem prepared to contribute, prior to publishing critical assessments of other people's scientific products.

### *The Decision to Replicate*

The importance of the Minneapolis experiment stems from its test of theory, its rigorous experimental design, its visibility in the popular press, its apparent impact on policy and the fact that it was replicated. Support for replication was widespread. The original authors urged replication (Sherman & Berk, 1984b). Early praise for the study's design among criminological scholars was tempered by a preference for replication (Boffey, 1983; Lempert, 1984). It is less well known

that a highly influential Department of Justice Task Force recommending the adoption of a pro-arrest policy nationwide also recommended replication of the Minneapolis experiment (U.S. Attorney General, 1984). There were, however, serious objections to replication, primarily from within NIJ. One concern was that, since the results of the Minneapolis experiment were in conformity with the political preferences of the current administration, the results from a replication were unlikely to be more supportive of these political preferences and could directly undermine the administration's position. Another concern was that any replication would be expensive and multiple replications would consume a substantial portion of the modest research budget at NIJ. In this instance, the political director of NIJ chose to follow the scientific advice instead of the political or budgetary advice. Of equal note, the reformers on the Attorney General's Task Force promoting the use of arrest simultaneously favored additional research on the effectiveness of arrest as a deterrent to spouse assault.

The decision to replicate the Minneapolis experiment turned out to be easier than the decisions on how to replicate. What aspects of the Minneapolis study should be copied and what aspects should be changed? How many new sites should be implemented and how would NIJ select the departments and the researchers to implement the replications in those sites? Perhaps the most important question was, would any police department other than Minneapolis agree to randomly assigning treatments to suspects? At the time, there were few scientific or administrative examples to guide this process.

The ultimate resolution of these issues was the initiation of six new experiments, one that began in 1985 (Omaha) and five additional sites initiated in 1986. NIJ required that each replication must involve experimental comparisons of alternative police responses to misdemeanor spouse assault incidents and measure victim safety using both official police records and victim interviews (NIJ, 1985). Other aspects of the design were left to the preferences of the local teams of researchers and implementing police agencies. Seventeen law enforcement agencies competed to be part of the replication program even though this program, unlike the NIJ Police Family Crisis Intervention programs of a decade earlier, did not provide additional financial resources to the department or to participating officers. The replication effort was research, not a demonstration, program and there were no Federal subsidies to the participating departments.

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The main lesson of the events from 1983, when the Minneapolis results were initially released, to 1986 is that it was actually possible to replicate the design of the Minneapolis experiment but that this effort was neither instantaneous nor easy. In fact, the program's design imposed a number of administrative burdens on the participating departments and none of the police arrest studies would have been possible without the willingness of law enforcement agencies throughout the country to participate in rigorous research examining their own behavior on an issue of considerable public controversy. Like Minneapolis, these departments had risen to Wilson's challenge to gather systematic and empirical evidence of the consequences of their actions on the victims of domestic violence.

#### *The Omaha Experiments*

There were two police arrest experiments implemented in Omaha, Nebraska between 1986 and 1989. One of these experiments (Dunford, Huizinga, & Elliot, 1990) closely copied the design of the Minneapolis Experiment: it involved the random assignment of arrest, separation and counseling in misdemeanor domestic violence incidents. The second experiment (Dunford, 1990), implemented simultaneously with the first, involved the random assignment of an arrest warrant in misdemeanor domestic violence incidents when the offender was not present when the police arrived. The Omaha studies found (and later studies confirmed) that when probable cause existed to make an arrest, the offender was absent more than 40% of the time. The first, and perhaps most important, lesson of the Omaha experiments is that police practices can be no better than 60% effective if they are limited to treating offenders who wait for the police to arrive. Using a variety of measures, Dunford (1990) found that warrants were consistently associated with less re-offending and that in several but not all of their measures, these comparisons exceeded the traditional tests of statistical significance. Based on the partial support from the statistical tests and the consistent direction of the effects of using warrants, Dunford (1990) suggested that the use of warrants deserved further investigation.

The substantive conclusions of the Omaha offender-present experiment did not confirm the original Minneapolis findings published by Sherman and Berk (1984a). In the Omaha offender-present experiment, Dunford and his colleagues reported that arrested offenders

were more likely to re-offend based on official police records and less likely to re-offend based on victim interviews. Neither of the Omaha results, however, were sufficiently large to be statistically significant and

The selection of Omaha as a site came about in ways not dissimilar to the selection of Minneapolis as a site. For instance, the principal investigators, Sherman and Dunford, had prior personal and professional relationships with the police chiefs in Minneapolis and Omaha, respectively, and this facilitated but did not ensure the departments' willingness to participate. In Minneapolis, the new reform chief was not particularly popular with the department and Sherman needed to negotiate with mid-level management and recruit the volunteer officers. During the operation of the experiment in Omaha, the chief was fired, re-hired and then fired again. The experiments were successfully implemented because of the social and professional skills of the principal investigators and their ability to collaborate with the police departments that implemented the research.

What lessons are to be drawn from the Minneapolis and Omaha results? The results are different but the experiments, while similar, were not conducted using the same measures or methods. For instance, in the victim interviews in Minneapolis, both violent acts and threats of violence were counted as failures and half of the re-offending instances involved threats only. In Omaha, only actual violence with injury to the victim was included in the measure of re-offending. Despite the more restrictive definition of new violence in the Omaha study, the proportion of victims that reported new violence in Omaha was over 40%; in the Minneapolis study the level of new violence reported in victim interviews was about 26%. In Omaha, Dunford and his colleagues compared treatments as randomly assigned and did not use statistical corrections for the misapplication of treatments. There are numerous other methodological differences between the two studies and it is difficult, if not impossible, from these two published works to determine whether the nature of police responses to domestic violence was different in Minneapolis and Omaha or whether some or all of the methodological differences generated the diverse results.

The publication of diverse findings is a common practice in social research but it can be disconcerting to policy makers who are trying to inform, if not base, policy on research findings. While there are meth-

odological improvements in the Omaha offender-present study-notably researcher not police officer control of randomization and a much higher proportion of victims interviewed-both studies approach the standards for research advocated by the National Academy of Sciences. A major lesson of the Minneapolis and Omaha studies is that rarely will one social experiment, no matter how well designed and implemented, tell us very much and a second experiment, even one designed as a replication, does not add that much more knowledge. This would be true if the Omaha results were exactly the same as the Minneapolis results, but the disparate results emphasize the weakness of a scientific literature or a public policy based on one or two studies. In its wisdom, the management of NIJ had foreseen the limitations of just two police arrest studies and had found the funds and the will to initiate six replications.

The Omaha experiments reported on the prevalence of re-offending, the frequency of re-offending and the time to first new offense. The original publications on the Minneapolis experiment (Sherman & Berk, 1984a, 1984b) had reported only on the prevalence of re-offending. A 1986 National Academy of Sciences report (Blumstein, Cohen, Roth, & Visser, 1986) had encouraged the use of these alternative dimensions of criminal careers and victimization and the Omaha and other police arrest studies adopted the use of these alternative measures. In addition, Berk and Sherman (1988) reanalyzed the Minneapolis data using a survival model and continued to find statistically significant deterrent effects. Dunford and his colleagues reported that in both official records and in victim interviews some victims reported multiple new offenses and that the total number of new offenses was higher for arrested suspects than for suspects not arrested. Neither of these effects was statistically significant. In their analysis of the time to first failure, they found effects in the direction of deterrence in the victim interviews but in the other direction in the official records; neither findings were statistically significant. The lesson here is that arrest could decrease the proportion of suspects with new offenses but increase the total number of new offenses against a smaller number of victims.

The use of alternative measures and data sources means that there are not just one or two but many effects from each of the police arrest studies and a serious evaluation of the effectiveness of arrest requires a clear specification of which effects are important and which are not.

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Unfortunately, our theories of deterrence and our understanding of how arrest and other treatments might improve the safety of women are not sufficiently well developed to specify exactly which measure or methods are the best tests of effectiveness. This is not simply a methodological issue but a central concern for individuals concerned with policy and for individuals concerned with testing theory. For the purposes of this paper, we have generally limited our discussion to the prevalence of re-offending but our choice is based on the need for parsimony and does not reflect theoretical or policy preference.

### *The Charlotte Experiment*

The Charlotte experiment (Hirschel & Hutchison, 1992; Hirschel, Hutchison, & Dean, 1992) followed the Minneapolis and Omaha models of testing three police actions-arrest, separation and counseling, and used official records and victim interviews to assess re-offending among randomly assigned treatments. Omaha and Minneapolis, however, were mid-sized Midwestern cities with relatively low crime and low unemployment. The racial composition of the Minneapolis sample was almost predominately White (57%) or Native American (18%). In Omaha, the sample was about 50% White and 50% African-American. Charlotte is a southern city with relatively high crime, high unemployment and the experiment there had a relatively large (70%) minority population. The evidence from Minneapolis and Omaha may be inadequate to address the effectiveness of alternative police responses in this very different context.

The published results of the Charlotte experiment were similar to those obtained in Omaha: in the official records, arrest was associated with increased re-offending and in the victim interviews, arrest was associated with reduced re-offending. In Charlotte, as in Omaha, neither of these effects were statistically significant and Hirschel and his colleagues argued that their experiment provides "no evidence that arrest is a more effective deterrent to subsequent assault" (Hirschel et al., 1992, p. 29). There are, however, two possible interpretations of the results obtained in Charlotte and in Omaha. One interpretation is that there is, in fact, no difference between arrest and other treatments. The second interpretation is that the research designs used in these studies are not capable of detecting differences that do exist. Despite the experimental design, the Omaha study had only 330 experimental cases (and 242 interviews), so the Omaha design is unlikely to be able



to detect effects as big as those found in the Minneapolis study. The 686 experimental cases (and 338 interviews) in the Charlotte study meant that the analysis of official records was powerful enough to detect the kinds of effects reported in the official records in Minneapolis but not the effects reported in the 338 victim interviews.<sup>4</sup>

The results of the Minneapolis, Omaha and Charlotte studies agree on one point: there is no large or even medium sized deterrent effect for arrest. The Minneapolis results suggest that there is a small to medium sized effect; the Omaha and Charlotte studies did not find even small effects but their designs are generally not strong enough to detect modest or small effects (Cohen, 1988; Garner et al., 1995). The main lesson is this: three relatively small studies are not sufficient to answer the two central issues of this research: does arrest deter spouse assault, and, if it does, by how much?

### *The Milwaukee Experiment*

In Milwaukee, teams of researchers and police managers, in cooperation with local domestic violence service providers, designed and implemented an experiment that obtained 1,200 experimental cases and interviews with 921 victims (Sherman, 1992; Sherman et al., 1991; Sherman et al., 1992). The results of this experiment were consistent with the results found in Omaha and Charlotte: there was no statistically significant difference in the re-offending rates in official records and in victim interviews based on whether the suspect was arrested or not. In Milwaukee, on both measures, the arrested suspects had higher rates of re-offending in both the victims interviews and official records. Because of the random assignment of treatments and the larger sample size, there is no confusion in the Milwaukee study between non-existence effects and weak designs. In fact, the statistical power of the Milwaukee study was sufficient to detect even small effects but no such effects were found.

The design of the Milwaukee experiment involved some innovative approaches to better understand the effectiveness of alternative police responses to domestic violence. First, in order to assess the underlying mechanism of how arrest might deter future violence, this experiment examined differences between on-scene arrest with a short period of incarceration and on-scene arrest with a longer period of incarceration. Using official police records and victim interviews, the study found no statistically significant differences between these two arrest treat-

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ments. Second, the Milwaukee study used a third measure of re-offending-records of police calls to the local shelter. Using this measure, the Milwaukee study found statistically significant results showing arrest associated with higher rates of re-offending (Sherman et al., 1991). While the uniqueness of this measure makes direct comparison of these results with the results from the other police arrest studies difficult, the evidence obtained from the shelter data clearly does not support the notion that arrest deters subsequent violence. Third, the Milwaukee design called for interviewing some of the arrested suspects immediately after they were arrested. While the nature of these interviews limits their utility, the idea of suspect interviews is important. In fact, deterrence theory (Maxwell, 1998; Zimring & Hawkins, 1971) posits changes in suspect behavior but the design of the police arrest studies was to interview victims.

### *The Experiments in Metro-Dade*

The experiment in alternative police responses to domestic violence in Dade County (Pate et al., 1991) found statistically significant deterrent effects for arrest when re-offending is measured by victim interviews; the official records also showed arrest to be associated with decreased re-offending but the effect was not statistically significant.<sup>5</sup> This was the first confirmation of the statistically significant effects observed in Minneapolis and increased the likelihood that there is a deterrent effect for arrest. With the addition of the Dade findings, we can observe that, using victim interviews, four of the five experiments had found effects in the direction of deterrence; in two of these experiments, the effects were statistically significant. Using official records, two of the five experiments had found effects in the direction of escalation and in only one experiment (Minneapolis) were these effects statistically significant. Minneapolis had established the importance of measuring the safety of victims; the emerging pattern suggests the importance of how victimization is measured, by victim interview or by police records.

There were two experiments implemented in Dade. The first was the replication of the Minneapolis experiment with just two treatments, arrest and no arrest. The second experiment used the same incidents as the first but randomly assigned half the cases to a program of follow-up services that was already in place in Dade County. This second experiment was larger and more rigorous than the Minneapo-

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lis, Omaha and Charlotte experiments and just as rigorous as the replication experiment in Dade County. Pate et al. (1991) report that there were no differences in the official records and in the victim interviews between those victims who had been given the follow-up police services treatment and those who had not. The statistical power of this experiment was sufficient to warrant the conclusion that these services did not protect the victims of domestic violence. The results of this second experiment were never published and have received no attention in the voluminous literature of alternative police responses to domestic violence. The study was not even mentioned in either of the recent National Academy of Sciences reports (Chalk & King, 1998; Crowell & Burgess, 1996), despite the fact that it meets all of the Academy's criteria for research quality. Given the extensive interest in post arrest follow-up services for victims of domestic violence, continued inattention to the nature and results of the one true experiment on the limited ability of these services to actually help victims ignores the best available evidence and may put the safety and lives of women at unnecessary risk.

### *The Colorado Springs Experiment*

In the largest police arrest study ever conducted, the Colorado Springs Police Department (Berk, Campbell, Klap, & Western, 1992a; Black et al., 1991) randomly assigned 1,660 domestic violence incidents to four treatment groups-arrest, separation, on-scene counseling and post incident counseling. The results of this experiment in many ways mirror the results reported in Dade County-a statistically significant deterrent effect existed when re-offending is defined using victim interviews but the deterrent effect found in the official records was not statistically significant. The results of the Dade and Colorado Springs experiments breathed new life into the diverse findings from the police arrest studies but they did not resolve whether the weight of the available evidence favored or opposed the deterrence argument.

The size of the Colorado Springs experiment strengthened its design but it also created numerous implementation problems for the Colorado Springs Police Department. The study's design called for interviewing all of the victims shortly after the experimental incident and at about six months after the experimental incident. Had they accomplished those goals they would have completed 3,320 interviews. In addition, the Colorado Springs study attempted to interview

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three fourths of the victims by phone on a biweekly schedule for up to three months. Had they accomplished that goal they would have completed another 6,225 interviews for a total of 9,545 interviews. They actually interviewed 1,350 or 84% of the victims at least once and completed a total of 6,032 interviews. The extensive interviewing, however, raises another question: did the attention and surveillance involved in the interviewing process contribute to or detract from the safety of the victims. This issue is relevant to all of the police arrest studies where the assigned treatment was not just arrest but arrest with follow-up interviews; however, the interview intensive study in Colorado Springs highlights the importance of this design feature. Ironically, prior to Maxwell (Maxwell, 1998), there were no published results based on the victim interviews from Colorado Springs.

### *The Atlanta Experiment*

There was a seventh police arrest study initiated in the Atlanta Police Department but, as of 1999, this project has not produced a final report to NIJ or published any findings from this research and it is unlikely that it ever will. Given the conflicting findings from the other six experiments, the evidence from Atlanta could have contributed much to the issue of the effectiveness of arrest as a response to spouse assault. Implementation failures happen, but the fact that this project did not produce an accounting of why the study was not completed means that we learned next to nothing from this \$750,000 investment. The failure of the Atlanta project, however, highlights the accomplishments of the other studies: despite innumerable obstacles, eight police arrest studies were competently and, in some aspects, expertly implemented in six jurisdictions.

### *Summarizing the Site Specific Results*

The existence of diverse findings from the police arrest studies raises the central issue of this paper: how can the information in these studies best be understood. Since the publication of reports and articles on the design, implementation and findings of the six police arrest studies, several assessments of the meaning and lessons of these experiments have been produced. Four of these prior assessments warrant note.

The National Academy of Sciences review (Chalk & King, 1998, p. 176) conclusion that arrest will not "produce a discernable effect on misdemeanor spouse assault" was arrived at through a qualitative judgment by a small group of scientific and policy experts. However, the Academy's review did not indicate a specific methodology for weighing and integrating the large body of evidence from the police arrest studies.

The second notable assessment of the results of the police arrest studies is Sherman's (1992) *Policing Domestic Violence*. This book length review stands as a detailed accounting and an intellectual *tour de force* on the origins, implementation, findings and interpretation of the police arrest studies by the individual who conceived and implemented the Minneapolis study and who first called for its replication. Sherman's personal contributions and experience brought great authority to an assessment of this literature but, in his assessment, he, too, had to rely heavily on the published findings from other people's research. Unlike the Academy, however, Sherman has an explicit method for synthesizing the results of the six police arrest studies. His essential approach is to count the number of jurisdictions whose findings generally support deterrence—Minneapolis, Dade, and Colorado Springs, and the number of sites whose findings lean in the other direction—Omaha, Charlotte and Milwaukee and then compare the characteristics of those studies. Counting the number of individual studies supporting and not supporting a hypothesis has been a common way to assess a large number of common studies but this method of synthesizing research has several known weaknesses (Bushman, 1993; Hedges & Olkin, 1980, 1982). For instance, this method assumes that studies with 330 incidents are equivalent to those with 1,600 incidents, that one study with a large deterrent effect is equivalent to one study with a small escalation effect (and vice versa), and that each jurisdiction has a single and easily identified "finding" for or against deterrence. While Sherman's use of an explicit method is to be preferred over the Academy's unarticulated judgment call, the assessment methods in *Policing*

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*Domestic Violence* can produce inaccurate estimates of the specific deterrent effects of arrest on domestic violence.

Qualitative reviews, however, are only one method for assessing a large set of scientific evidence (Glass, 1976; Rosenthal, 1978) and a growing body of research has argued that qualitative assessments of the findings from individual studies are, in most instances, inadequate for assessing the true effect of social interventions (Cook & Leviton, 1980; Cooper & Hedges, 1993; Hedges & Olkin, 1985). This research tradition recommends the use of more systematic and quantitative methods to summarize the overall effect of a large body of research. This approach takes each study as a research subject and uses the published findings from each study to compute a standardized effect across all studies. Sugarman and Boney-McCoy (1999) describe the use of these analytical techniques in family violence research generally and apply those techniques to the police arrest studies. They summarize information on the prevalence of new offending and find, on average across all five SARP experiments and the Minneapolis experiment, that there is no effect for arrest when victim safety is measured using the official police data, but that there is a modest deterrent effect for arrest when victim safety is measured using data from victim interviews. Sugarman and Boney-McCoy's meta-analysis was able to determine, contrary to the qualitative accounts in the literature reviews or the individual site reports, that there are no statistically significant differences in the effect of arrest between sites. Sugarman and Boney-McCoy's review, however, is limited to measures of the prevalence of new offending because the original publications do not provide sufficient information to compute standardized effect sizes for measures of frequency of new offenses or the time to first new offense. In addition, their meta-analysis does not control for differences in interview completion rates, differences in the kinds of cases that were included in each site, or other variable design characteristics in the police arrest studies.

A very different review and assessment of the police arrests studies was published in three companion articles (see: Berk, Campbell, Klap, & Western, 1992b; Pate & Hamilton, 1992; Sherman, Smith, Schmidt, & Rogan, 1992). These assessments analyzed the raw data from four (Omaha, Milwaukee, Colorado Springs and Dade County) of the six police arrest studies and found that arrest deterred employed suspects but did not deter unemployed suspects. The employment findings fit

nicely with the hypotheses about the role of an individual's stakes in conformity<sup>6</sup> in the effectiveness of criminal justice sanctions but do not fit as nicely with the application of a consistent policy of either using or not using arrest in all cases of domestic violence. While the secondary analysis of raw data can be a rigorous and robust method of synthesizing the results of diverse research publications (Boruch, Wortman, & Cordray, 1981; Bryant & Wortman, 1978; Hyman, 1972), there are numerous methodological limitations of the specifics of these four analyses (Garner et al., 1995, pp. 21-24). For instance, only one of these articles uses data from as many as four of the five new police arrest studies, none of these articles uses the same prevalence or frequency measures and none of these studies uses outcome measures derived from the victim interviews.

### *NEW FINDINGS FROM A MULTISITE ANALYSIS*

Our earlier detailed literature review and critique of the published reports from the police arrest studies (Garner et al., 1995) concluded that the site specific reports do not provide sufficient information to understand the exact effect of arrest on subsequent misdemeanor spouse assault. Among other things, that review established that none of the site specific publications employed the same outcome measures or methodological approach used in the Minneapolis study and that the publications from the new police arrest studies had no common approach to measurement issues or analytical methods. Our review, however, could not determine the extent to which the diversity of measures and methods influenced the diversity of findings from the police arrest studies. At that time, we urged caution in accepting the published results until a multi-site analysis using common data and a consistent analytical approach was available. That time is at hand.

We have recently completed a multi-site analysis of the individual records from the five new police arrest studies (Maxwell, 1998; Maxwell, Garner, & Fagan, forthcoming, 2000).<sup>7</sup> Using incident level data from all five new police arrest studies, consistent definitions for eligible cases, common measures for defining the prevalence, frequency and time to first new act of aggression, and a common analytical approach that controlled for site characteristics, the highly variable rate at which victims were exposed to interviews, and the age, race, criminal history and employment *and* marital status of suspects, we

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found that arrest had a modest but consistent deterrent effect on subsequent aggression by male offenders against their female partners. In analyzing the prevalence, frequency and time to failure in official records and the prevalence and frequency of re-offending in the victim interviews, the only analyses possible across all five sites, we found that arrest was always associated with reduced re-offending. However, only when we measured re-offending based on victim interviews did those reductions meet the traditional criteria for statistical significance. Like Sugarman and Boney-McCoy (1999), we tested whether there were different effects in any of the sites and in none of our analyses were the differences between sites statistically significant. Our findings support the view that the deterrent effect in this multi-site analysis is not dependent upon the jurisdiction in which the study was conducted but is dependent upon the nature of the outcome measures used.

Most of the prior research evaluating the SARP experiments relied on less rigorous methodological approaches to the synthesis of information across studies, were limited to official records only, and used *ad hoc* qualitative criteria for assessing the site differences. Interestingly, the meta-analysis by Sugarman and Boney-McCoy (1999), which did not suffer from these limitations, obtained findings on the prevalence of new offending similar to our own—no statistically significant differences in the official records and a statistically significant deterrent effect in the victim interview data. However, the similar findings from their meta-analysis and our secondary analysis of individual level data may be coincidental. For instance, they used all the cases from six experiments; we used individual level data from five experiments and then removed about 15 percent of the cases because they were not assaults by adult males on adult females or were repeat experimental cases. We included threats of violence and property damage in our analysis;<sup>8</sup> the published studies synthesized by Sugarman and Boney-McCoy typically do not. We are encouraged by the similarity in our findings and their findings, but a detailed comparison of how our methods, measures and analyses are different from those employed by Sugarman and Boney-McCoy (and which are to be preferred for which purposes) is beyond the scope of this paper.

We were able to go beyond what was possible in their meta-analysis and compute tests of the frequency of re-offending and of the time to first failure. We found that the direction of all of our tests favored the

deterrence hypothesis and that out of five tests, the two tests using victim interview data were statistically significant. We argue that the effect of arrest was real but modest: reductions in subsequent aggression varied from four to 30%, depending upon the source of the data (official records or victim interviews) and the measure of re-offending (prevalence, frequency or time to failure) employed (Maxwell et al., forthcoming, 2000). We call these effects modest for several reasons. First, in three of the five tests, the effects did not reach statistical significance. Second, other effects were much larger than those for arrest. For instance, the suspect's age and prior criminal history were associated with increases in re-offending from 50 to 330%. Third, regardless of site, outcome measures, or treatment delivered, most suspects did not re-offend. Consistent with other studies (Langan & Inns, 1986), the police arrest studies have found consistent desistance from re-offending once the police have been called. Our finding is that arrested suspects desisted at higher rates than suspects who were not arrested. Lastly, we determined that the effect for arrest was modest because, even among the arrested cases, a substantial proportion of victims-on the order of 30%-reported at least one new offense and those who were re-victimized reported an annual average of more than five new incidents of aggression by their partner. However consistent the deterrent effect of arrest may be in our analysis, it is clearly not a panacea for the victims of domestic violence.

#### *THE LESSONS OF THE POLICE ARREST STUDIES*

The police arrest studies command a unique place in criminology and in our understanding of alternative police responses to domestic violence. Beginning with the Minneapolis experiment, they changed the nature of public debate from the safety of police officers to the safety of victims and demonstrated how good research could contribute to the policies and practices of the police. These studies heralded the use of higher methodological standards for criminological research and continue to inform a central theoretical debate in criminology over the deterrent effects of legal sanctions.

These qualities are rare (to non-existent) in criminological research in general and in most investigations into the nature of domestic violence in particular. Few studies can match the methodological rigor, implementation fidelity, theoretical contribution or impact on policy

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of any of these studies; as a group they may be unsurpassed by any other multi-site collaborative effort in social research on crime and justice. Despite these qualities, it is unlikely that another police arrest study will ever be conducted. The policy debate on alternative police responses to domestic violence is no longer about alternatives to arrest but alternatives to what the police and other agencies should do after an arrest. Random assignment between arrest and other treatments was ethically appropriate only when policymakers agreed that they had insufficient evidence to choose among them. The police arrest studies took advantage of that unusual historical moment and experimented with the lives of over 10,000 victims and suspects (and their families). As a result, we now know far more about the nature of domestic violence and the ability of arrest to improve the safety of victims. Although the size of the deterrent effect of arrest is modest, the empirical and political support for arrest is unlikely to evaporate sufficiently to warrant new tests like the Minneapolis and replication experiments. There may be additional reviews of this research and even more reanalyses of its data, but this research program is finished collecting data and implementing experiments.

The police arrest studies were, to say the least, imperfect. Sites were selected based on the willingness of police agencies to participate, not as a representative sample. Victim interviews were preferred over suspect interviews. The measures of failure did not include a variety of psychological, employment, or quality of life indicators which may be relevant to an assessment of the overall effectiveness of arrest. The experiments did not standardize the delivery of treatments within or between sites and obtained few common measures of what the alternative police responses to domestic violence actually involved. Both official records and victim interview data collection were not always systematic, complete or accurate. The data that were collected and archived do not permit the production of the complete set of originally contemplated multi-site analyses and, of course, the findings and data from Atlanta were never published. Future research would do well to build upon the strengths of the police arrest studies and to avoid, if possible, their design and implementation limitations.

The contemporary policy discussion surrounding the appropriate societal responses to domestic violence includes numerous suggestions for mandating arrest, coordinated legal and social service responses, the use of protection orders, offender treatment programs,

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intensive responses to high-rate or high-risk situations, and the prosecution and incarceration of offenders. These suggestions do not appear to be derived from, nor tested by, systematic empirical research that approaches the standards proclaimed by the National Academy of Sciences and met by the police arrest studies. The current discussions and policy options appear to be driven more by the personal preferences and ideology of the currently powerful than any real evidence about the safety of victims or behavior of suspects subjected to these plausible but untested approaches.

Decisions about alternative police responses to domestic violence need to be made every day and made without complete knowledge of the actual effectiveness of those responses. Innovation and policymaking cannot and should not wait for research findings, but we should learn from what we are doing. This is true in 1999 as it was in Minneapolis in 1981 and in Omaha, Charlotte, Colorado Springs, Dade County and Milwaukee in 1986. The police arrest studies were possible because a small number of police managers and domestic violence reformers were prepared to invest in a long-term program of rigorous research testing their most cherished beliefs about the most effective police responses to domestic violence, while the rest of the country continued to make decisions based on the best information available. At present, millions of victims and suspects and their families are part of a grand social experiment for which it appears the commitment to and use for knowledge approximates the police family crisis intervention debacle of the 1970s more than the program of systematic social research that was the police arrest studies. Moreover, there appears to be less of a willingness among researchers and policy-makers to accept Wilson's challenge to obtain "reliable information as to the consequences of following different approaches." We fear that there is a lesson here.

## NOTES

Bard provides no details on when or why the 24th precinct was chosen as control.

At the time, the National Institute of Justice was called the National Institute of Law Enforcement and Criminal Justice.

3. Gartin's dissertation was chaired by Sherman, making his analysis less than completely independent of the original authors of the Minneapolis experiment. Gartin also analyzed police dispatch data and found that this new measure, in combina-

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Lion with victim interviews and suspect criminal history data, resulted in no differences between arrest and other treatments (p. 157).

For a more detailed discussion of the issue of statistical power in the police arrest studies, see Garner et al., 1995, p. 13-16.

With 907 experimental incidents, the findings of no effect in Dade cannot be attributed to a weak design or low statistical power. Pate et al., 1991, also reported statistically significant deterrent effects when failure is defined as a new rearrest.

These studies report inconsistent results for three other stakes in conformity variables-race, marriage, and prior criminal record.

We did not include the Omaha offender absent study because it did not include arrests; the necessary information to conduct this analysis was not present in the archived data from the Minneapolis study (See Gartin, 1991).

8. For these and other details of our analyses, see Maxwell et al. (Forthcoming, 2000).

***Extract from Violent Offenders APPRAISING AND MANAGING RISK*****SECOND EDITION**

By Vernon L. Quinsey, Grant T. Harris, Marnie E. Rice, Catherine A. Cormier

This extract is referred to in the section in this submission:  
Value of Having Integrity in familycaught process

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**Management Problems and Criminal Propensity**

The largest group of problems among the offenders, and the single most important contributor to the cluster solution of patient subtypes, was the Management Problems scale. The problems were those that pertained to the management difficulties that individuals presented within the institution. Anger was also a problem on this scale, but because it was such a common problem, it is considered separately.

Those familiar with institutions can immediately recall individuals who present such problems, and they can recognize the disruption and stress created when these inmates regularly exhibit problem behaviors. Individuals who exhibit such behaviors are difficult to treat, and staff frustration with them often makes them candidates for "bus therapy" (Toch, 1982). Many of the problems of offenders in this category (e.g., lying, lack of consideration for others, impulsivity, superficiality, manipulation, denying all problems) are diagnostic of antisocial personality disorder and psychopathy. There was also a very close correspondence in the Ontario Survey data between Management Problems scores as rated by clinicians and background variables associated with psychopathy, criminal history, and the actuarially determined risk of future violent offending. The problems associated with these disorders have been found to be extremely resistant to treatment. One of the first challenges for mental health professionals called on to provide treatment for persons who are serious management problems is to help them acknowledge that some problems might be addressed by programs. For some offenders who do not refuse treatment, problem solving combined with social skills training, moral reasoning (some-

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times again combined with social skills training), and academic programs that focus on the humanities and social sciences (and that emphasize democratic teaching methods used by an instructor selected to be a good role model) are helpful (e.g., Duguid, 1983, 1985). Contingency management procedures to reduce conflict at work and attitudes toward work, as well as deliberately contrived opportunities for interactions with prosocial models who are inter-personally skilled and who have been trained in how to respond to antisocial comments and rationalizations for law violation, can also have positive effects on management problems (e.g., Daigle-Zinn & Andrews, 1980).

To date, data demonstrating that any of these interventions reduce criminal or violent recidivism among high-risk adult offenders are limited. However, some research indicates positive effects of training in moral reasoning, academic programs, and provision of prosocial models who model anticriminal values and attitudes for young offenders of moderate risk. In general, behavioral treatment programs aimed at teaching and strengthening skills and modeling prosocial attitudes have been shown to be more effective in reducing recidivism than relationship or insight-oriented therapies (for a review, see Andrews & Bonta, 2003b). Although interventions that reduce recidivism among psychopathic individuals have not yet been identified, the evidence presented in chapter 5 indicates that confrontational milieu-type treatments raised the recidivism rates of psychopathic mentally disordered offenders. Similarly, a structured, social learning, coping skills approach was found to be more effective than an interactional insight-oriented approach with sociopathic alcoholic individuals (Kadden, Cooney, Getter, & Litt, 1989). Considerable evidence suggests that institutional violence is not just the product of individual pathology but rather a result of a variety of variables, including personal characteristics, staff behaviors, institutional routines, and other environmental factors (Rice et al., 1996; Rice, Harris, Varney, & Quinsey, 1989). These variables are discussed later in this chapter.

**Aggression**

Aggression (toward self and others), which includes problems of assaultiveness, property destruction, weapons possession, and suicide threats, were infrequent among the offenders surveyed, but such considerations are extremely important to placement decisions. Even the occasional occurrence of these behaviors within an institution is likely to mean that an individual is not considered for release or any intervention other than pharmacotherapy. Moreover, the possibility of these behaviors is a primary reason for the implementation of a wide variety of expensive and therapeutically unwieldy security precautions that must often be applied to all institutional inhabitants even though only a small minority is likely to require them. Thus, the reduction or elimination of problems of physical aggression inevitably has very high priority in secure treatment facilities.

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Interventions frequently used to reduce assaultiveness include drugs, seclusion and mechanical restraint, behavioral treatment, and staff training. Drugs and restrictive or punitive management strategies alone are unlikely to be successful. Rather, careful and consistent behavioral consequence of problem conduct and the training and on-ward reinforcement of incompatible prosocial behaviors are required. Staff training in verbal calming and defusing skills combined with fair and reasonable management policies are probably essential (Rice et al., 1989). It is also necessary to ensure effective prosocial models in the institutional environment and to control patients' exposure to the media. Indeed, as will be discussed later in this chapter, the real challenge in reducing aggression in institutions appears to lie in achieving effective control of staff behaviors.

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#### Conclusions

The relationship between various clinical problems and the dangerousness of individuals is sometimes direct (e.g., assaultiveness), sometimes indirect (e.g., suspiciousness), and sometimes unknown (e.g., life skills deficits). What is evident from the foregoing discussion is that the relationship between response to any particular form of treatment and subsequent dangerousness is largely uncharted empirically. Like other clinicians, we regard the improvement of patients' conditions and behaviors as desirable in themselves. Moreover, the relationship between therapeutic interventions and subsequent behaviors cannot be established until the interventions are appropriate, implemented properly, and guided by plausible theory. Progress will not be made unless coherent treatment programs can be developed, delivered, and evaluated.

A repetition of the survey several years later (Rice, Harris, Cormier, et al., 2004) revealed that some of the anticipated problems were realized. That is, the size of the forensic population continued to increase, as did the base rate of violence among released forensic patients. As discussed in chapter 4, these trends were attributed to the failure of the forensic system to uniformly incorporate current findings about effective risk appraisal and management into regular practice (Rice, Harris, Cormier, et al., 2004). That is, by making release decisions dependent on characteristics unrelated to future violence (Hilton & Simmons, 2001), forensic decision makers achieved suboptimal results in the assessment and treatment of their clientele. This in turn meant that the numbers of forensic patients and the violent behavior of those re-leased to the community were higher than necessary given current empirical findings (Rice, Harris, Cormier, et al., 2004).

#### Assuring Program Integrity

Proper implementation of treatment programs in secure institutions presents formidable difficulties. Program Development Evaluation (G. D. Gottfredson, 1984) emphasizes the accurate measurement of the internal integrity or quality control aspects of interventions. In any institution, it is

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important that clinical staff interact with patients in a manner that fosters the attainment of rehabilitative goals. Of general concern, therefore, is the extent to which staff behavior creates a therapeutic atmosphere as opposed to an anti-therapeutic one. More specifically, it is essential to focus on whether and how well staff perform specific tasks related to particular treatment programs. An extensive literature demonstrates that the condition of psychiatric inpatients is often worsened during hospitalization through the process of institutionalization. Institutionalization has often been associated with punitive staff attitudes toward clients, discouragement of initiative, and lack of meaningful tasks or direction for frontline workers.

It is not difficult to understand why staff behavior is quite resistant to change in typical institutions. Most institutions are strongly hierarchical, and frontline staff have little say in management decisions. Programs are often so poorly specified that no one is sure what is supposed to be done. Frontline staff are not rewarded for therapeutic interactions with institutional residents, and supervisory staff often do not model such behaviors. Moreover, program managers, who might be expected to implement interventions known to affect staff performance, almost never have line authority over frontline staff. Managers frequently use ineffective methods in attempting to improve staff behaviors; memos and in-service training programs alone are insufficient to develop or maintain appropriate staff behaviors. Administrators inadvertently signal that treatment is unimportant (e.g., by basing staff assignments and promotions on criteria unrelated to program performance). Security issues in secure psychiatric settings further exacerbate efforts to change the interactions of frontline workers with patients.

Whereas the technology of implementing rehabilitation programs is not well developed, improvement is possible in at least some situations. In an environment where program managers have relatively complete control over staff hiring and duties, nonprofessional staff can maintain a therapeutic atmosphere and can systematically interact with chronic and assaultive mental patients in therapeutic interactions, as documented by Paul and Lentz (1977).

Frontline staff are enabled to perform and maintain therapeutic behaviors under the following conditions:

- they receive detailed written description of the desired behaviors;
- their supervisors offer frequent approval of enactments of the behaviors and a description of precisely what was being approved;
- they receive continuous posted feedback describing progress on staff target behaviors;



- they are given rewards for superior performance; and
- they have input into decision making.

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Prerequisites for these interventions are a well-managed institution with a detailed overall program plan and individualized treatment objectives.

Institutional managers frequently do not know how staff behave, whether change is occurring on the front line, or what important clinical events transpire. Institutional records of assaults, seclusions, and most other events are notoriously unreliable. For this reason, specifically developed information systems are required to measure important clinical events and staff behaviors.

#### Assaults and Other Incidents

Because assaults on other inmates or on staff are relatively common-place (assaultiveness was rated for 22% of the offenders in our Ontario Survey), assault frequency is one area that can be singled out for precise and continuous measurement to obtain information about the integrity of interventions. Institutional assaultiveness does not emanate solely from psycho-pathology but relates in an intimate way to institutional social systems, of which frontline staff are an integral part. Because variations in staff behaviors affect assault frequency, assaults are an important, if indirect, indicator of staff clinical skills. Moreover, assaults are clinically significant in their own right and can be measured in an accurate manner by carefully defining assaults and having investigators interview patient and staff witnesses within a day or two of each incident. As might be inferred from the discussion in chapter 4, informal impressions, even by victims, of the levels of inter-personal violence are surprisingly inaccurate (e.g., Hilton, Harris, & Rice, 1998, 2003b). Changes in staff behaviors can reduce institutional violence (Rice et al., 1989).

#### Staff—Patient Interactions

The daily interactions between staff and participants are of most direct concern in any rehabilitative program. To obtain accurate, quantitative measurements of these interactions, they must be observed as they occur. Such information not only allows rigorous prospective evaluation of institutional changes, but also can provide a stimulus for improvement and tangible evidence of progress if they are continuously communicated to staff and supervisors. Such direct observation measures as the Staff—Resident Interaction Chronograph (Paul & Lentz, 1977) permit the monitoring of treatment integrity and yield data that are directly comparable across and among institutions.

#### Institutional Atmosphere

Although the Staff—Resident Interaction Chronograph is the most important measure of staff performance, measures of ward atmosphere can play a valuable supplementary role. Because data can be gathered from both staff

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and clients, it is possible to examine the extent to which these perceptions agree. Ward atmosphere measures also are important because they provide an index of consumer satisfaction.

#### Clinical Notes

Another area in which management can obtain reliable information about the quality of ward-based interventions involves the measurement of the quality of clinical records and notes. Notes reflect the training, ability, and motivation of the staff who make them and can be used in studies of staff performance. Because entries in an individual patient's or inmate's file are designed to satisfy legal requirements and to convey information for use in assessment, it is of crucial importance that the information in these records provide an accurate description of those aspects relevant to clinical decision-making. A clinical file should identify the behaviors that are to be changed before the client can be safely discharged or transferred, provide an accurate description of the individual's condition and behaviors that appear relevant to his ability to behave responsibly in a less secure setting, and describe the treatments provided and the outcome of these treatments.

Deficiencies in typical clinical records of progress are commonly observed. One of these involves the frequent non-comparability of observations recorded at different times. To detect clinical change, at least two comparable observations of behavior must be obtained. For instance, one could not infer that someone had improved on the basis of observations made in two very different situations, because the time the observation was made is confounded with the observational context. A more insidious kind of non-comparability results from the different interpretations of descriptive phrases used by different observers. The imprecision of commonly used negative descriptors (e.g., surly, hostile, threatening, confused) results in very poor agreement among staff members. Moreover, recorded observations typically vary in a nonrandom manner. An examination of clinical files shows that the frequency of notes increases as the inmate or patient disturbs others, thereby presenting a gloomy caricature of behavior; comparable observations made at random or regular intervals are required to provide an unbiased assessment of performance. A possible, albeit radical, solution might be to discontinue informal anecdotal clinical notes and to replace them with standardized rating scales of behaviors and counts of specific types of significant incidents.

#### Institutional Violence Revisited

Aggression within institutions warrants further discussion in light of the foregoing discussion on treatment integrity, because it is of great concern to those involved with secure facilities. Research and the development of theory on institutional assaultiveness (G. T. Harris & Rice, 1992) indicates that three classes of variables influence the frequency of institutional violence

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and, consequently, the effectiveness of interventions; they pertain to assaulters, victims of assault, and violence-promoting environments.

Most studies of institutional assaultiveness have been conducted in psychiatric institutions where the medical model predominates. It is perhaps not surprising, therefore, that most researchers begin with the assumption that the problem lies within the assaulter, and so they examine the pathology of the assaulter. Because the majority of assaults are committed by a small proportion of individuals, and because the best predictor of future institutional aggression is past institutional aggression, developing programs for those persons who have exhibited institutional violence makes good sense. As previously noted, seclusion, drugs, and restraint have been most commonly used with assaultive institutional inhabitants. The most important observation to make about these "solutions" is that although they are ubiquitous, there is almost no evidence that they reduce violence. What can be concluded is that the use of such strategies varies greatly over institutions with similar populations. Moreover, their use is related to such institutional characteristics as the amount of structured activities for clients, management style, and staff morale.

Considerable evidence (e.g., Paul & Lentz, 1977) demonstrates that behavior therapy techniques are effective in teaching assaultive individuals alternative behaviors. Difficulties with the implementation of social skills training, such as anger management and assertiveness training, however, are frequently experienced because of the tendency of institutional staff to discourage socially skillful client behaviors. Social norms for inhabitants of most institutions require them to be quiet and compliant. Thus, prosocial behaviors learned and rewarded in treatment are consequated quite differently (punished) by staff and peers. Behavioral interventions for assaultiveness at the individual level alone may not render any service to assaulters at all. There is abundant and persuasive evidence that interventions aimed at altering the social environment in the form of token economies can have profoundly positive effects on a wide variety of behaviors, including institutional assaultiveness. Maintaining the integrity of token economies has been difficult for a variety of reasons. Bureaucratic practice is often incompatible with effective behavioral programming. It is difficult to retrain custodially oriented staff, who traditionally reward both appropriate and inappropriate behavior inconsistently, to use behavioral techniques that require the careful application of contingencies. In addition, frontline staff invariably seek to punish assaultiveness but frequently do not reinforce incompatible, appropriate responses. In token economies, frontline staff tend to lobby for more and larger penalties for misbehaviors and simultaneously to give fewer and fewer rewards for appropriate behaviors.

A second method by which attempts have been made to alter the institutional environment has been to reduce the effects of aggressive models. For example, an effort to manipulate the amount of television violence viewed

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by Oak Ridge patients was unsuccessful because, despite administrative approval, staff did not comply with the prescribed television regimen. Compliance fell as the rate of violence in the television diet fell; during the nonviolent regimen, staff ignored the prescription and watched what they liked (which often included violent programs). Ironically, staff were in agreement with researchers that televised violence probably increases aggressive behavior (G. T. Harris & Rice, 1992).

Probably the most radical way to reduce assaultiveness comes from studying the staff victims of assault. Victims of assault and their attackers frequently have sharply different perceptions concerning their interactions. Thus, it would seem that assaults can be decreased by changing the interpersonal behavior of peer and staff victims of assaults. Attempts at changing assaulter-victim relations by improving the social skills of unpopular patients and teaching a variety of prevention skills to staff are expensive in terms of staff time but have been given high priority at Oak Ridge relative to other training. Institutional management has frequently hired staff who had no training and experience in mental health, so it is not entirely surprising that a training course in managing aggression might be regarded as desirable but not essential.

One wonders about the actual contingencies that apply to staff behaviors, especially those consistent with reductions in assaults by inmates or patients. For instance, the impact of decisions affecting labor—management relations, such as compensating staff for working in a dangerous environment, renders the issue of incentive to reduce institutional violence questionable.

The primary reason that most behavioral interventions in institutions are difficult to maintain is that they exist in an environment that is not behavioral. That is, the contingencies that apply to the behavior of staff, administrators, and government bureaucrats often do not promote the long-term maintenance of offender behavior change. Managers rarely use behavioral principles in attempting to alter staff behaviors. Staff learn that promotions are not contingent on commitment to treatment and that their performance is more likely to be judged on such criteria as having a neat work area, "meeting well with others," or having all their paperwork done. Effective behavioral change in both patients and staff can be maintained when consistent, appropriate contingencies for behaviors are provided (Paul & Lentz, 1977). Unless program managers and their supervisors have some knowledge about offender treatment in general and behavior modification in particular and about violence and behaviorally sound ways to reduce violence, they are unlikely to recognize, let alone reward, desirable behaviors in their subordinates. Staff trainees must be carefully selected for the necessary intellectual, social, and technical skills, as well as self-confidence and enthusiasm. Within secure treatment facilities, the optimal staff for behavioral programs, including those to reduce levels of violence, might be behavioral

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technicians rather than nurses. Although changing the qualifications of staff requires interventions at high levels in the system and can take considerable time, it is another way to increase the likelihood that behavioral interventions are adopted and maintained.

Despite the declarations of politicians, bureaucrats, administrators, and clinicians to the contrary, an examination of the existing contingencies reveals that reductions in institutional violence (or any other improvements in patients' adaptive behaviors) are not always the primary concern of service organizations. When such laudable ideals are the genuine goals of the organization's leaders, they are often ineffective because their efforts do not embody what is already known about human behavior change. The behavior of violent offenders, institutional staff, program managers, and bureaucrats does not change (and stay changed) simply because such changes are virtuous, moral, desirable, or dictated from above. Changes occur when the contingencies applied to the behavior support and continue to support that behavior change.

#### A Final Note on the Institutional Environment

The operation of secure facilities for the treatment of dangerous or aggressive clients requires a complex set of policies and procedures to promote prosocial, cooperative behavior; to provide appropriate and humane consequences for assaultive, dangerous conduct; to guide the day-to-day conduct of staff and ensure therapeutic interactions with clients to encourage them to participate in therapeutic activities; to provide criteria for the access clients have to their peers, potential weapons, and the community; and finally to guide decisions about and recommendations for discharge. Institutional token economy programs provide an effective system of policies and procedures to guide client and staff behavior. Token economies have no serious rivals as institution wide systems to guide administrative and clinical decision making. There is good evidence that a more typical, unstructured milieu actually does harm to its inhabitants by inadvertently promoting aggressive, psychotic, and dependent behaviors.

An interesting dilemma emerges for those who consider using token economies. Some patients in our jurisdiction have made a legal challenge to the use of token economy programs, arguing that they should be able to avoid program consequences because the program is a form of treatment and they are constitutionally protected from receiving unwanted therapy. This argument, if accepted, would place clinicians in the position of having to arrange an institutional environment in which client behaviors have either no consequences or only unplanned consequences. The clinical and administrative dangers inherent in such an environment are obvious.

It is our view that the clinical leaders of an institution are obliged to use the systematic application of consequences to influence the behavior of the institution's inhabitants, including encouraging participation in treatment.

## ***Extract from Toddler Taming by Dr Chris Green***

What makes toddlerhood so difficult?

Parents with toddler-age children experience almost three times the risk of psychological disturbances of parents with babies or school-age children. There is ample scientific evidence to back up this claim, but why do the problems peak in children of this age? The answer is simply that toddlers have some amazing characteristics, which make their management difficult. Their extraordinary behaviour can often rock the stability of the soundest parents. Some of the difficulties are discussed below.

### **Negativity**

Children learn to say 'no' long before they learn to say 'yes', and at the age of 3 this simple little word flows out with the clearest articulation - due mainly to two years of non-stop practice. It has been said that the word 'no' is only used by toddlers whose parents over-use the word from the child's earliest age. This would be a nice, simple explanation, but we find that even with the most positive, best parents, the child will use the word with great regularity.

### **Senselessness**

Toddlers live only for the present, neither thinking too deeply about events that took place more than five minutes ago, nor worrying much about the future, which, for them, is a mere ten minutes away. Battles are fought with no thought for the repercussions and reason generally falls on deaf ears. There is little understanding or acceptance of our often odd, but much prized, adult values. In short, this is an age devoid of reasoned thinking, when the word 'conscience' does not occur in the vocabulary.

### **Stubbornness**

As the toddler is developing self-control he soon discovers that he can also exercise quite a bit of control over others. All that needs to be done is dig in the heels, flex the muscles, and watch the amazing effect this has on everyone around. Stubbornness without sense is bound to lead to conflict, and when negativity and a total lack of interest in anyone else's rights are added, it adds up to a sure fire combination for parent demolition. Certainly this behavioural quartet has for a long time been recognised as a potent threat to parents' health. Perhaps, in years to come, children leaving maternity hospitals should have stamped on their backsides the warning 'toddlers are a health hazard'!

Not only is stubbornness without sense a danger to parents' health, it is also a hazard in the course of life preservation. A determined 2-year-old may well decide to have a tantrum in the middle of a busy highway, the only concern being the theatrical impact of the performance. The impending disaster as cars and trucks thunder down on the assembled gathering does not enter the child's mind. That's the future, and we don't worry about that at this age.



### **Self-centredness**

Most toddlers have tunnel vision, which focuses only upon their own needs and happiness. It never occurs to them that other people may have rights too. When a child is playing and wants a particular toy, it is unlikely that he will ask politely for it, as the 'smash and grab' method is a much more effective way of getting what he wants. The idea of taking turns and sharing is quite foreign and, although toddlers enjoy being with other children, they tend to play beside them rather than directly with them. This self-centred behaviour is normal for most toddlers - although it has

### Chapter 3 The difficult child: who do we blame?

#### History

In the nineteenth century, writers were in no doubt that the cause of all deviant behaviour was bad breeding. Some put forward the notion that 'the born criminal and lesser sinners were beyond help due to their abnormal make-up'.

As the twentieth century dawned, this notion gradually changed, and environment was thought to be the major influence on children's behaviour. By the 1950s this notion had become highly refined: all behavioural blame was laid squarely on the shoulders of inadequate mothers. It seemed irrelevant whether the marriage was stable and the parents exceptional. Mother still collected the blame, regardless of the untold unhappiness, guilt and suffering it caused.



The folly of the fifties

As a doctor who has lived through the aftermath of this era of Psychological abuse of mothers, I am amazed that such an attitude could ever have existed. I would have thought that any professional who views life with his eyes even partly open could not but help see the immense variation, based on simple heredity, in all aspects of human nature. Any parent with more than one child must observe their completely different personalities. This difference can not be accounted for solely by the different standard of care each child receives. I do not believe that most families give out different care to different children, although some children are difficult to love owing to heredity and may generate more anger and irritation in their otherwise tolerant parents.

An example of genetic influence can be seen by anyone visiting the nursery for the newborn in any hospital. There you will find children who have never been in the care of their mother and yet have totally different personalities. In one cot there might be a beautiful, quiet, loving baby exuding affection, cuddling in tightly, and feeding with ease. In the very next cot could be a child in identical health who is irritable, arches his back, cries most of the time, dislikes being held, and is forever spitting out his feed. One child would be a joy for any parent; the other would be a trial even to the most well intentioned family.

The cause of difficult behaviour: the view in the eighties

Behaviour and temperament are now known to have great variation and a strong hereditary component. This hereditary influence gives us the basic material to work with, but the final product depends very much on environmental factors, such as parenting. It is now accepted that children's behaviour is a product of both heredity and environment. In Chapter 2 it was postulated that 40 per cent of children were destined to be easy, probably being well behaved in even the most undesirable environment. Ten per cent were probably going to be exceptionally difficult in anyone's hands and would try the patience of a saint. Another 15 per cent had difficulties that should be almost completely overcome with high class parenting or would become worse if badly handled. This left 35 per cent whose behaviour would be dependent on their temperamental pattern and the parents they chose to be born to.

It may seem a silly observation, but sometimes a family gets delivery of a child that does not suit them. I know that in my working day there are people who irritate me profoundly, but luckily I am able to escape to the quiet of my own home at the end of the day, far away from their annoying influence. When a child who does not suit a family arrives, the parents are unable to exercise this privilege of escape and have to force themselves to make the baby welcome. When a peace-loving, polite, quiet, obsessively tidy family is hit by a human tornado, their equilibrium is, not surprisingly, shattered. To survive this onslaught, major adjustments have to be made. It is just as upsetting when a sporting, active father spawns a docile, passive boy more interested in picking flowers and quiet pursuits than playing league football.

if a difficult child is born to a family, they are stuck with that child. They can't just send him back like some disagreeable parrot from a pet shop. What can be done, however, is to adjust your handling of the child to help him through his difficulties and get the best results with the fewest headaches.

Other hereditary influences

Other children exhibit strong genetic traits, with patterns of behaviour similar to those of their parents. Parents often mistakenly believe that children watch their lives and selectively extract the best points, being oblivious to their many weaknesses. In reality the reverse seems to be true, with children actively seeking out their parents' weaknesses and firmly establishing similar habits.

I see many children who are difficult to live with, and I believe they are not very unlike their parents. There are, for example, totally disorganised children who turn out to be very similar to their totally disorganised parents. Some children are sent to me because they are unenthusiastic and have little drive to do anything much in life. These children often come from equally boring parents.

I also see many over-active, impulsive fathers who always have to be on the go. They frequently produce active sons who are often as overactive, impulsive and intolerant as they are, which leads to a major



personality clash. I was recently brought 3-year-old twins, whose father complained that they could never sit still and were forever rocking and head banging. In my office I watched them rock from foot to foot, always slightly out of time, like defective windscreen wipers on a car. It soon became clear that father was an over-active, driving athlete who had never sat still from birth. The more he complained about his children's over-activity, the more I noticed him rocking, swaying, kicking his feet, moving his hands - exhibiting a problem far more severe than his normal children.

The whole question of heredity and environment becomes confusing when the parents have behavioural difficulties that cause marital disharmony and a far from satisfactory environment. When the

Is behaviour worse in the eighties?

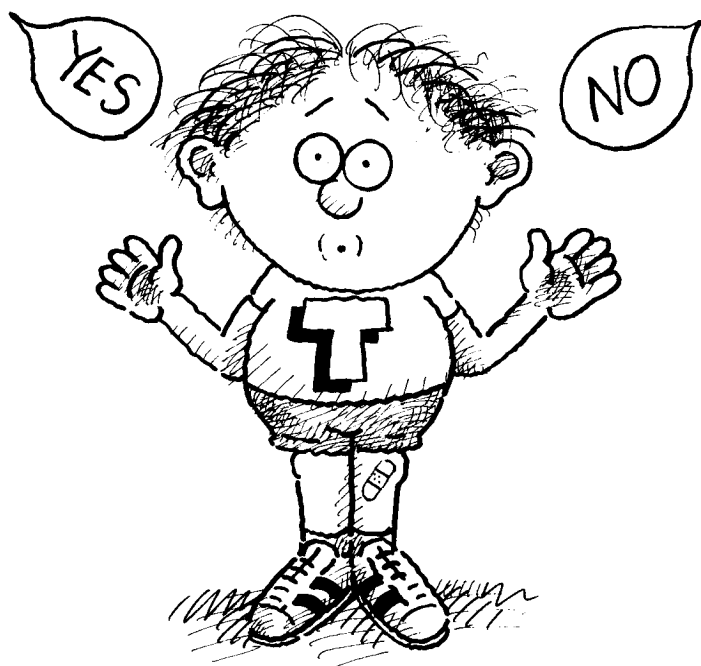
Forty years ago, children's behaviour problems appeared to be much less common. Many writers have blamed the current increase on the artificial colourings and other poisons we give our children. I do not believe this is the main cause; there is, I think, a much simpler explanation. Forty years ago, if one went to a doctor seeking help for one's child, it would be in the knowledge that all blame for the problem would be laid firmly on the mother, and some long-term psychotherapy for the parents might be suggested. This, in itself, must have been a major deterrent from seeking help, preventing most troubled parents admitting to anyone but their closest family that they could not handle their offspring. Behaviour problems may seem to be more common these days because of the break up of the extended family and the highly competitive world our children live in. I believe that it's not so much an increase in the problems themselves, as an increase in the awareness of them, now that parents are prepared to talk more openly about them. Now that they realise that criticism will not be levelled at them, parents are coming for help early and this is a healthy change for the better.

#### Conclusion

Some children are born easy and some children are born just plain difficult. There is little we can do to change the basic material we have been given to work with, but much we can do to improve the way we handle children's behaviour to make the best of what we have.

#### Chapter 6 Discipline that works-most of the time!

Parents with newborn babies manage to cope pretty well in the first year, but as soon as that negative, stubborn, self-centred terrorist toddler appears, many wonder what has hit them. As their own discipline methods falter, they are bombarded with a mass of free advice and helpful opinion from assorted relatives and armchair philosophers, who managed to successfully screw up their own children and are now determined to do the same to yours. Some experts dispute the need for any sort of discipline, in the belief that model parents so influence children by their shining example that discipline is largely unnecessary. If you happen to be one of the fortunate few who has been rewarded with



an easy child, this may indeed be true. For the rest of us, however, discipline is most certainly necessary. But we must choose our methods carefully.

It may seem strange, but young children tend to feel much more secure when they live in an environment that has structure and clearly defined limits. Not only does good discipline make children happier, but it gives a much needed foundation to help them cope with the limits and restrictions of school and life in general. Children who have experienced little discipline before school find it hard to change overnight and fit into the limits of a kindergarten class. Some children are strong enough to take this in their stride, but many react badly, and become withdrawn, sullen and unhappy. The result may be that the child will then refuse to go to school at all.

I am in no doubt as to the benefits of discipline, but I worry about some of the stupidity that is displayed by parents in this area. In this chapter various types of discipline are discussed, some of which are effective most of the time; some will work occasionally; many methods are best forgotten altogether.

#### The reign of terror

The reign of terror is an old-fashioned remedy based on the belief that any child can be battered into shape if the parents are firm enough. This method was fashionable in Victorian times, and many a drawing-room echoed to such sayings as 'little children should be seen and not heard'.

Some parents still believe that a house run on strict authoritarian lines can produce the perfectly behaved child. These dictatorial families believe they have created a child who is well-behaved and perfect, in short, a being closely resembling the reincarnation of his God-like parents. On the surface the child may appear well-behaved, but underneath this thin veneer of compliance lies resentment and potential for rebellion. Model children produced through intimidation continue to present this model picture just so long as the threat is present. Once the threat is lifted they rebel; for example going wild when their parents go away for the weekend, getting boozed up or having 'super orgies'. They leave home at the first possible opportunity, making a rude departing gesture as if to say 'Thanks for nothing, dad'. Like government by intimidation, discipline of children by intimidation is only good as long as the intimidation continues. It never leaves respect, long-term stability or happiness.

#### Smacking

When lecturing to parents I delight in asking how many of them are child smackers. From an audience of about a hundred a few hands tentatively poke up; heads turn uneasily as parents fear that they may be the only child beaters in the auditorium. The next question is: 'How many of you do not smack your children?' Out of a hundred parents, rarely will more than two hands ever appear.

Whether it is a good or a bad way to treat children, the fact of life is that these days most parents smack their children some time or other. Although a great many experts have philosophised on the evils of this punishment, most parents I see continue to be of the opinion that a well aimed smack is quite justified in certain well-chosen instances.

If you are one of the 98 per cent of parents who are going to use smacking as a form of punishment, could I plead that it be restricted only to the following two situations:

- 1 after some dangerous, life-threatening act, or
- 2 to defuse the rapidly escalating, no-win confrontation.

Following some dangerous, life-threatening act, an immediate hard smack will strongly reinforce the message that whatever has just taken place must never again be repeated. Cats may have nine lives, but as those of us who work in big hospitals know, this does not extend to children. Children only escape once or twice when climbing out of second-floor balconies, dismantling electrical appliances, playing with fire or running across busy roads. A painful smack may produce minor emotional trauma, but it is a small price to pay if it significantly increases the chances of keeping a child alive and healthy.

Other parents find that a quick, sharp smack may be most valuable in defusing deteriorating situation that is about to get hopelessly out of control. In toddlers, most major behavioural wars start with some insignificant trigger that sets in motion an ever-increasing cycle of trouble. It is preferable to nip this swiftly in the bud rather than wait until it has escalated to mammoth proportions and upset the entire family. A well-timed smack may well defuse the situation, diverting the child from escalation to the more easily controlled 'dry tear' crying of the Hollywood actor.

#### Smacking misused

Having mentioned two situations in which smacking might be considered, it must be emphasised that smacking does more harm than good in every other instance. There is no doubt that, used as the main form of discipline, smacking is negative and emotionally degrading, as

well as being an extremely ineffective form of control. Any form of discipline that is over-used loses its potency, and smacking is no exception.



Usually when smacking occurs, the child is hit by a mother who has lost her temper. She is naturally upset at her loss of control and feels guilty and sorry for what she has done. This by itself would not really matter, if it were not for the intelligence and highly refined manipulative skills of the toddler. In this case, our soft-hearted mother is already feeling guilty and the toddler is well aware of the fact. As the crying starts, the child is aware that she is feeling even more upset and, recognising the mother's distress, he cries even harder. The vicious cycle continues until mum can stand it no more and picks up the child for a big cuddle. This may indeed be a most charitable way for a good mother to behave, but in this instance it is quite wrong. Mother has in fact rewarded the wrong behaviour and given the message 'doing something naughty gets a cuddle'. The right way to deal with it is for her to walk away from it completely. In this instance smacking is a hopeless form of discipline, which has backfired and resulted in the child being rewarded for the very behaviour that mum was trying to extinguish.

Another occasion in which the smack leads to more trouble than it is worth is when, after the child has been smacked, he does not cry but immediately returns the smack. The parent then returns the blow and the toddler reciprocates. This is a no-win situation, and a minor war develops that is much easier to get into than it is to get out of. As the battle heats up, the parent gets more angry, and although the toddler is receiving a few minor flesh wounds, it becomes the best game for weeks.

Toddlers are negative, stubborn and have little sense. If their parents also exhibit these qualities, any fight will go on 'to the death', with each party showing an unthinking determination to cast the last blow. Most toddlers are not only more intelligent, but also more theatrically talented than their parents ever realise. When smacked they look the parent straight in the eye, either communicating the message in words or Oscarwinning dumb insolence. 'It didn't hurt ... see if I care.' Of course the smack hurt, but the child is well aware that denial will infuriate and punish the smacker. Such are the acting talents of some toddlers that I have had children referred to me accompanied by a note from the family doctor, 'Please investigate the nerves in this child's legs. He appears to feel no pain!'

Whether smacking is good or evil, it continues to be used by almost all parents. If it has to be used, then it should be administered carefully, selectively and certainly not used as the main form of discipline. Parents must be careful that, although they may appear to win the first battle with a smack, the resulting war is not lost because of the skilled follow-up mounted by the intelligent and theatrically talented toddler.

Debating, arguing-is there a place for democracy?

I am constantly amazed by how much parental energy is consumed in arguing, debating and being democratic with little children. Holding learned, philosophical debates with toddlers has hit almost epidemic proportions in my practice, and it is about as effective as discussing differential calculus with a Masai warrior. Parents seem to have read somewhere that every little detail of what is going on in life must be explained to their child. This is a commendable and charitable action, but it often leads to troubles that pass unrecognised by the highly intelligent, but functionally blind, parents. Toddlers crave attention, and one of the main ploys of guaranteeing a constant flow of this commodity is asking endless questions. If you examine these questions you will find that the repertoire is small, little interest is shown in the answers, and the same question is repeated hundreds of times, or for as long as the parents will rise to the bait.

We know that children like to ask questions and, if not overdone, this is a rather sweet characteristic of their age. If they are interested in the answers, then of course they must be given and all supporting details explained with honesty and simplicity. The problem is that debating and questioning may have no relation to the quest for knowledge and may be only being used as an attention-seeking ploy. When debating with children of any age parents must ask themselves, 'Is the child genuinely interested in the answer to the question?' Or they must consider whether the answer matters or whether the way they are being stirred up is the real reason for the exercise.

Take for example the case of an acrobatic toddler who is jumping off your dining table onto the floor. It is natural to tell him to stop. He immediately asks 'Why?' Well, one could easily embark on a discussion concerning the lack of strength of modern chipboard furniture or possibly mention Mrs Smith, who lives in the flat downstairs, outlining the characteristics of the nervous disorder that accounts for her intolerance for loud overhead noise and her allergy to large sections of plaster landing on her head from the ceiling above. All this will avail you naught. I believe that the question 'why?' should be answered, but if it is purely manipulation, parents should immediately pull rank and say, 'Don't, because I say so'. You might as well be warned now that, although countless philosophers have debated at length the finer points of love for mankind, good and evil, this is a futile exercise with a toddler, who is far too obsessively self-centred to care for humanitarian principles.

With arguing and debating children give explanation and knowledge, but don't give attention for the wrong reason.

Shouting

We all know that shouting at children is a poor form of discipline, yet most of us continue to do it. Young children are so sensitive to the noise, activity and tensions around them, that shouting tends to stir them up most effectively. The more the parent shouts, the more boisterous the child's behaviour becomes, and

#### Threats

Thinking back to my student days in my home town of Belfast, I clearly remember bus travel to and from the hospital, and two things stick in my mind. I will never forget the winter rush hour with its overcrowded buses, their interiors smoky and thick with brown globules of condensation dripping from the roof. The occupants only took their pipes or cigarettes from their mouths to embark on a spasm of coughing that would have done credit to a tuberculosis ward. Equally vivid is the memory of the mothers with their uncontrollable offspring who crowded onto those early morning buses. The trip from city centre was punctuated by 'Stop that', 'Do that again and I'll smack you', 'I'm warning you for the last time', or 'I'll get the man to put you off. Threats, empty threats-the most common and futile form of discipline.

Threats, if not over-used, work on some children, but only if, after fair warning, the threat is carried out as promised. Of course on those early morning Irish buses the children knew their exhausted mothers were all talk and no action. They had heard the threats so often before it was all water off a duck's back, a daily ritual that stirred up the mother and did nothing for the child.

#### Delayed punishment

Young children do not have a very far-reaching view of life, thinking back no further than the preceding ten minutes and looking no further forward than the next ten. An hour hence, tomorrow or next week is all quite beyond their understanding. Discipline for the toddler must, therefore, be immediate. Withholding some treat tomorrow or waiting

until dad comes home are both unfair and ineffective. If the toddler has to wait until father comes home, he has long forgotten his misdeed and the delayed punishment will come as a thunderbolt from the blue. This does more to frighten and confuse the child than improve his behaviour or act as a long-term deterrent.

With toddlers, punish immediately and make that the end of the episode. Parents who hold a grudge, continue to fume and engage in psychological warfare for the rest of the day do great harm to their own health, upset their child and guarantee a day full of tension.

#### Diversion tactics and removal of privileges

Sensible mothers who find that they are in danger of running headlong into a confrontation or tantrum situation become quite skilled at quickly diverting the child's attention before the obnoxious behaviour has a chance to get properly underway. There is a psychological moment that comes just before all control is lost, and the clever parent will skilfully use this in the cause of peace. The method is discussed in greater detail when we look at toddler tantrums.

Removal of privileges is quite an effective technique in the school-age child, particularly after the age of 7 years. The child who won't do homework, stays out late or commits some major transgression can have his bicycle impounded or television viewing restricted. In toddlers this is pointless and should not be attempted.

#### Negotiated settlement

The technique of negotiated settlements is common in sorting out industrial disputes, where union members may agree to build an extra car a day in exchange for say, a longer tea break and ten weeks holiday a year. Bargaining and debating with toddlers is generally a waste of time, but the early-school-age child is often interested in coming to such a settlement.

With some children over the age of 4, I will get the parents to draw up a list of behaviours that they would dearly like to see eradicated and then balance this with a list of things that the child himself would very much enjoy having changed. Though we rarely revolutionise a child's

behaviour completely with this method, there is always some improvement. Recently I saw a girl of 3 years 11 months whose parents were greatly upset that she still sucked a dummy day and night. She was a bright little girl, and as she was clearly aware of the consumer society in which we live, we negotiated a simple contract in her presence. On her fourth birthday she was taken to a large toyshop where she chose her favourite doll. What happened thereafter had been fully negotiated and went most smoothly. When the girl reached the till, the shop assistant handed her the doll and, in exchange, the little girl handed over her dummy, which was then posted into the permanent care of a convenient rubbish bin. Negotiated settlement had passed off without a hitch.

## Behaviour modification by encouragement and rewards

Whenever the phrase 'behaviour modification' is mentioned, parents usually expect to learn some sinister technique of the type used by secret police to mould unwilling members of society to their way of thinking. Others have heard that behaviour modification has been used to train dogs, pigeons and circus animals and take exception to any suggestion that it might be used on their darling child. There is nothing startlingly new about behaviour modification, it has been around for centuries and is probably the most effective method for disciplining children. It is a technique that is part of our everyday life and is used just as often on our friends, colleagues, bank managers and other assorted members of humanity as it is on our children.

Behaviour modification is a simple technique by which one uses rewards to build up the behaviour one wishes to encourage, while ignoring the undesired, bad behaviour. By rewarding the good you hope that it will be repeated, and by trying to ignore the bad you hope that it will go away. Admittedly this is a highly simplistic view of the technique-and I can hear disbelievers grumbling that it is silly and that you can't ignore bad behaviour. Let me assure you that it does work.

We know that toddlers are frequently negative and obstinate. When a stubborn, determined parent confronts a stubborn, determined toddler it is extremely unlikely that either party can win. Upset parents get wound up and disturbed by fights, so they suffer much more than the toddler, who has a short memory and will have forgotten the confrontation long before the dust has even settled. The reward-based behaviour modification approach suits toddlers extremely well because it leads to far fewer fights and results in parents being much less tense. Let me give some examples.

## Example 1

A 4-year-old boy I saw once, whilst lying across his mother's knee to be examined, involuntarily straightened one of his legs and kicked me. Seeking a bit of fun, I jumped back holding my knee and pretending to make a great fuss. Ten seconds later, he kicked my other knee and I reacted similarly. By the end of the interview the little terror was jumping on my toes and kicking my shins with all the gusto of a spectator at a football final. Admittedly this is a rather odd way for a doctor to behave, but it clearly demonstrates what happens when one rewards a behaviour, in this case making a fuss when kicked. A more sensible and conservative doctor would never have noticed the initial kick, taking it for what it was, an accident, and by ignoring it the subsequent behaviour would not have built up.

## Example 2

A 3-year-old hyperactive boy destroys my office each month as he rearranges all my belongings and jumps on all my furniture. This boy spends his days running wildly around his home, going from naughtiness to naughtiness. As he speeds about his exhausted mother shouts at him in vain 'Don't', 'Stop', 'I'll smack you', and although these irate and useless shouts do not constitute high-grade attention, nevertheless they are a form of reward and in a strange way encourage the bad behaviour that they are supposed to stop. On the rare occasion that the child quietened down enough to perform some useful activity, his exhausted mother would give a sigh of relief, give thanks for the peace, and go into another room to get on with her housework.

This poor woman had become so ground down that she did not realise that she was using behaviour modification techniques to build up the wrong sort of behaviour. She was shouting at the over-active, destructive acts and giving them her attention, while the good behaviour, which came when the child settled, she ignored and left the room.

## Example 3

A 4 ½ year-old boy has difficulty with bowel training and is still soiling his pants. I work with him and get him really enthusiastic for a cure. A special chart is kept on the family's refrigerator door and every time he sits on the toilet great praise is given and a gold star is fixed on the chart.

He is not forced to use the toilet, but when he does and the result is positive, then four extra stars are given along with lashings of praise. When he is clean all day with no soiling, extra stars are attached and a small present given. This is an example of behaviour modification where the desired behaviours of sitting, using the toilet and being clean are rewarded, thereby building up and reinforcing them and gradually curing the soiling symptom. On the occasions that the child refuses to use the toilet or soils his pants, this is not dramatised but rather is ignored as undesirable behaviour.

## Rewards not bribes

Behavioural experts quite rightly disapprove of bribing children, although rewarding our children is to be encouraged. There is a subtle difference between reward and bribery. A bribe is a form of blackmail, in which the child is told that he can only have something after he has performed a certain task. The behaviour modification reward is given when there is no talk of what will happen until after the good behaviour has appeared, and then the

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reward comes as an immediate and pleasing reinforcement. There are what the experts call 'soft' and 'hard' rewards. 'Soft' rewards refer to praise, fun and encouragement; 'hard' rewards are items such as sweets, smiley stamps or plastic soldiers. Most toddlers are very happy with soft rewards, particularly attention; older children are often more aware of the world monetary system and may expect hard rewards.

In summary, behaviour modification is not some dubious new technique, but a well-tried method of moulding behaviour. When this technique is used properly much can be achieved without recourse to raised voices, tantrums, force, threats or parental insanity.

#### Selective deafness technique

It is possible to build up a toddler's undesirable behaviour by inadvertently giving him attention for the wrong reasons. When attention is being sought for the wrong reasons, and the parent realises it, a highly effective technique is selective deafness. Here the parent pretends to hear only the responses they wish from their child and cuts out all those that are generated for the sole aim of parental annoyance. Selective deafness is a technique that I first observed when watching how many husbands react when their wives are talking to them. It may be a most irritating way to treat one's wife, but it is an excellent way to manage the toddler who is trying to stir up his parents with a well performed repertoire of verbal insults.

Take, for example, the 3-year-old boy with conscientious, attentive parents who is thwarted in some misbehaviour. He turns to his mother and declares, 'I hate you'. We all know that he doesn't really hate his mother, but is merely trying to punish her. This outburst is best handled by the selective deafness technique. Indeed, most whingeing, whining, crying, bad language, debating and refusal to obey is best handled by this method.

#### Time Out

Time Out is a most effective form of discipline for all children. When parent and child are having a major confrontation, it is vital that the parent keeps cool and remains in control. The best time for using the technique of Time Out is at the point when control is about to be lost. It allows the warring parties to be separated, giving both time to cool off. The technique consists of putting the child alone in another room for a time until the situation is sufficiently defused. It is not a method of punishment, rather a means of keeping everyone cool and avoiding battles. The technique is discussed more fully in Chapter 7.

#### Conclusion

There are many possible ways to discipline a toddler and many different opinions on the need, or lack of need, for such discipline. Attempts to relate 'strict' or 'permissive' child-rearing methods to the development of behaviour problems has proved fruitless, despite volumes of material on the subject. The general principles outlined in this chapter apply to all toddlers, although we should not lose sight of the totally different personalities, and thus different disciplinary needs, of the individual child.

Have confidence in your own abilities at parenting, remembering that whatever works and feels right for you is what you should be doing, despite what the so-called experts may say.

## ***Report of Enquiry into the proceedings Christine and Alan Bristol Wanganui sir ron davison***

### **REPORT OF INQUIRY INTO FAMILY COURT PROCEEDINGS INVOLVING CHRISTINE MADELINE MARION BRISTOL AND ALAN ROBERT BRISTOL**

#### **Introduction**

Christine Madeline Marion Bristol (who I shall refer to as Christine Bristol) and Alan Robert Bristol (who I shall refer to as Alan Bristol) married on 15 February 1987, after having engaged in a de facto relationship from mid May 1984. At the time of their marriage they had one child, Tiffany, born on the 18th December 1986. Two further children were born of the marriage, Holly, born on the 11th February 1990 and Claudia, born on the 19th August 1992. Christine Bristol and Alan Bristol separated on or about 4 July 1993 and thereafter numerous proceedings followed in the Family Court at Wanganui with non-violence orders being sought by Christine Bristol against Alan Bristol and custody orders sought by both parties in respect of the three children of the marriage. A full summary of the various court proceedings and their resolution will be given later in this Report, but suffice it to say in this introduction, that on 4 February 1994 all three children were in the care of their father Alan Bristol at the former family home at Mary Bank Rd, Wanganui. The following day (5th February) Alan Bristol and the three children were found dead in the garage at that property. It was believed that Alan Bristol had killed the three children and then himself.

On the 8th February 1994 an article appeared in the 'Wanganui Chronicle' under the heading: "Dead Man Devoted Father: Lawyer" which quoted Alan Bristol's solicitor as saying that 'Alan Bristol was a devoted father.

That comment brought about a reply from Christine Bristol released through her solicitor in a statement which resulted in newspaper articles headlined: "Mother Rejects 'Devoted Father Version.'" "Victim of Domestic Violence, Woman Claims". (Note: It may be possible for judges to apply s.28 in a way that will allow my suggestions regarding presumptions to be adopted but for uniformity of practice and for giving emphasis to the changed philosophy for dealing with violent parents I think the amendment proposed is desirable.) 4. The court in making an order for access to a child where one of the parents has used violence to the other in a domestic situation shall first satisfy itself that adequate safeguards are imposed to ensure the safety of the non-violent parent during changeover times. Where access to a child is granted to a parent who has used violence to the other or to a child in a domestic situation such access should be supervised by an appropriate person until such time as the violent parent satisfies the court that it is safe to allow unsupervised access. 5. The powers of the Court to make "consent" orders in cases where violence by one party has been established should not be accepted and acted upon until the Court is satisfied that such consent was freely and willingly given. The Family Proceedings Act 1980 s.170 should be amended accordingly. Note: The practical difficulties of supervising access will need to be addressed. In this regard it may be of interest that in Auckland on the North Shore a "visitation centre" called "Care for Kids" was set up with the goal of enhancing the emotional and physical well being of children during access visits. Such a centre may be a useful model worthy of study. Obviously it may not be possible to establish such "visitation centres" throughout the country to deal with all supervised access requirements but the idea may prove to be practical in main centres. Ability of parents to deliver children to and collect them from such centres and the ability of the other parent to be able to go to such centres would be matters for consideration. 2 "Judge Gave Girls to Killer Father". In that statement an independent inquiry into the conduct of the case in the Family Court was called for. Mr Minister, you duly appointed me to inquire into the Family Court proceedings relating to Christine Bristol and Alan Bristol with a directive to report to you by the end of March 1994.

#### **The Terms of Reference**

The terms of reference require me to: "

1. Examine the Family Court file relating to proceedings in the court between Christine Bristol and Alan Bristol.
2. Consider whether the material on the file and such inquiries as you may wish to make point to the need for any change in the law or in Family Court practice concerning any matter that arose in the proceedings."

#### **History of Proceedings**

Between the Parties I have examined the two Family Court files covering proceedings between the parties and I believe that a comprehensive picture of events will best be obtained by referring to matters in the first file in narrative form as they provide but an early background to my inquiry. Matters contained in the second file dated from July 1993 will be referred to in chronological order by date of occurrence as best suited to following the various events as they occurred. Comments on matters contained on the files and on matters arising out of my inquiries will be deferred until a later stage of this Report. There are two court files: the first covers a period from February 1986 to November 1989. The second covers a period from July 1993 to February 1994. The First File This shows that the parties entered into a de facto relationship in mid-May 1984. They were engaged to be married on 9 May 1985, but the engagement was terminated mid-December 1985. Following the breaking off of the engagement Christine Bristol (then Carter) made application to the Court on 3 February 1986 for an interim non-molestation order based on allegations of assault, threats and harassing conduct by Alan Bristol. An interim order was made on 5 February 1986 with a date of hearing (on the question of whether an order should be made in substitution for the interim order) fixed for 18th March 1986. No hearing was held and no final order was made by this Court on that application after advice was received from Christine Bristol's solicitor

- that the application was to proceed no further. The Court then struck out the application. The child Tiffany was born of the de facto relationship on 18 December 1986 and shortly thereafter Christine Carter (as she then was) and Alan Bristol were married on 15 February 1987. Christine Bristol left Alan Bristol on 28 January 1989 and on 30 January 1989 she made application to the Court for non-molestation and non-violence orders against Alan Bristol and at the same time sought an interim order for the custody of the child Tiffany. The applications were based on allegations of assault and violence on the part of Alan Bristol. Alan Bristol consented to an interim non-violence order which was made by the Court on 30 January 1989 and a date of hearing to decide whether any other orders should be made was fixed for 8 February 1989. The parties were referred for counselling and then attended a mediation conference chaired by a Judge on 8 February 1989. - On that day agreement was reached by the parties and the Judge made orders for: Extension of the non-violence order to 3rd April 1989 Further counselling to be undertaken Interim sharing of the care arrangements for Tiffany. At a further mediation conference on 13 March 1989 following agreement reached between the parties, the Judge made orders for: Separation Variation of the shared access arrangements for Tiffany The discharge of the interim non-violence order The obtaining of a Social Welfare Report relating to the custody of Tiffany 4 Further counselling. On 14 April counsel was appointed by the Court to represent the child Tiffany in relation to matters affecting custody of the child. On 18th April an application for a non-molestation order was made by Christine Bristol again alleging assaults and intimidatory conduct by Alan Bristol. It was opposed by Alan Bristol. However the application never proceeded to a hearing and no order was made by this Court as counsel for the parties with the help of counsel for the child reached agreement on matters of custody and the Court on 13 July 1989 made an order by consent for shared access to Tiffany. A further order, by consent varying the access was made by the Court on 10 August 1989. At this stage the first file was closed. It appears that in or about late November 1989 the parties were reconciled and resumed married life together. Two further daughters were born. Holly on 11.12.90 and Claudia on 19.8.92. In April 1993 the family moved into a home at Marybank Rd, Wanganui. The Second File The second file was opened on 13 July 1993. It discloses the following actions. 13.7.93 Alan Bristol applied to the Court for an interim custody order in respect of all three children 19.7.93 Christine Bristol gave notice of her intention to defend the application and applied for an interim custody order in favour of herself. The circumstances giving rise to these applications were alleged by Christine Bristol to be that Alan Bristol had taken her from the home at Marybank Rd and left her at her parents home at 4 Toi St, Wanganui, at the same time making it clear to her that the marriage was over. Alan Bristol kept the three children in the family home. Affidavits filed by the parties contained allegations 5 of assaults and neglect of children by Christine Bristol and denials and allegations of infidelity on the part of Christine Bristol by Alan Bristol. 28.7.93 A pre-trial conference was held by the Judge. By consent the Judge made orders: 1. That Mr Refoy-Butler be appointed as counsel for the children with the immediate task of overseeing interim care arrangements for the children. 2. Counsel for the children was authorised to obtain a psychological report on the children directed to custody issues. 3. The Registrar to give the case priority for hearing on interim custody. At that conference the parties were each represented by senior counsel. 11.8.93 Christine Bristol applied to the court ex parte for a non-violence order and for a non-molestation order against Alan Bristol. The same day the Judge made an interim non-violence order and directed that the application for a non-molestation order proceed on notice to Alan Bristol at a date to be fixed after counselling of the parties had been completed. A date of hearing for a review of the interim order was given for 24.9.93. As the result of a conference of the parties which had been held by counsel for the children on the previous day (10.8.94) to discuss arrangements for the care of the children (although complete agreement was not reached on all issues) counsel for the child advised the Court of what he considered would be proper arrangements -for the care of the children and those arrangements were approved by the Court "until further order". The order provided for a "shared care" regime. 27.8.93 Counsel for Christine Bristol requested the Registrar to give a fixture for a 2 hour hearing in respect of interim custody. The Registrar advised however that he was not prepared to set the case down for hearing until he had received all affidavits and reports required by the parties and the Court and had been given a time estimate for the hearing. He indicated that then the case would be given priority. 6 The situation at this stage was that both parties had applied for custody of the children and an interim shared custody order had been made by this Court. A substantive custody hearing had yet to be held. Christine Bristol had applied for non-violence and non-molestation orders and the Court had - ex parte - granted an interim non-violence order but not a non-molestation order. Both applications were opposed by Alan Bristol. 7.9.93 Alan Bristol filed formal notice of defence to the applications for non-violence and non-molestation orders. A psychological report on the three children relating to custody issues was sought. 13.9.93 The Judge held a conference of counsel at which he directed that counsel for the children should file a memorandum regarding the domestic protection applications (non-violence and non-molestation) prior to 23.9.93 - being the date given for the interim non-violence order to be reviewed. 20.9.93 Counsel for the children filed his memorandum which now set out in full. "1. It is my submission that the defended hearings for Non-Violence and Non-Molestation Orders should not anticipate any custody decisions made by the Court. 2. The parties have made a number of allegations, and counter-allegations, in their Affidavits. I submit that any public hearing would only exacerbate their polarisation, and such would be of no assistance in their common dealing with the children. It is obvious that the children are going to be shared above the norm, and an atmosphere embittered by parental hostility will not be in the best interests of the children. 3. Mr and Mrs Bristol separated previously. They have previously filed papers and allege the same faults this time as they did last time. Without making any attempt to comment on the veracity of those allegations, I can only submit, that without the matter being contested in Court, the parties reconciled and appear to have lived happily together for the intervening years. Two more children have been added in that time to the family. 7 4. With respect, I doubt that the veracity of the allegations made will affect the decisions on the day-to-day care of the children. I note that Mrs Bristol makes no allegations against her husband in his role as a parent, in fact the reverse. There is no evidence against Mrs Bristol in her capacity as a mother, in her case also there is evidence that she is a caring parent. 5. Finally, I can advise that I am concerned that the children may be drawn into this dispute on violence. I have already been asked to see one child concerning such allegations. I can only say that if what she said to me was accurate, then it is likely that the Court would want to be aware of such matters prior to making any decision on the Non-Molestation and Non-Violence Orders." 21.9.93 Christine Bristol as a result of information which she discovered which led her to believe that applications had apparently been

made or were being made by Alan Bristol to obtain passports for the three children, with a view to removing them from New Zealand, made application to the Court, ex parte, for orders for the surrender of any passports and travel documents. 22.9.93 An interim order was made by the Judge requiring the surrender of the children's passports and/or travel documents to the Court. He also ordered that Alan Bristol and counsel for the children be served with the application and the order, and that the interim order be reviewed on 24.9.93 on which date the interim non-violence order was to be reviewed, the earlier date of hearing of that review - 23.9.93 - having apparently been changed to 24.9.93. 24.9.93 The parties represented by counsel along with counsel for the children appeared before the Judge. He made the following orders: "1. The interim non-violence order to continue until further order. Hearing of the domestic protection application is to be deferred pending hearing of the Guardianship Act proceedings. (This was in accord with the recommendations of counsel for the children made in his memorandum of 20.9.93). 8 2. Interim order requiring surrender of children's passports is cancelled. The passports may remain in the safe keeping of the Registrar at the request of Mrs Bristol, but are not to be released to any other person without leave of a Family Court Judge. 3. Counsel for the children is directed to inquire into the circumstances of the issue of passports for the children and to obtain copies of the relevant documentation on behalf of the children and to report thereon to the Court. 4. The other directions of 13.8.93 (shared care of children) are to continue." 29.9.93 The report of the Psychologist was released to counsel. That report confirmed bonding and attachment of the children to both parents. The oldest child, Tiffany, expressed a clear preference to remain in the care of her father. Both parents were regarded as equally capable of caring for all three children, but the psychologist clearly preferred ongoing arrangements where the children remained in the family home with the father but spending regular time with the mother. 29.10.93 The parties, their counsel and counsel for the children met and discussed care arrangements for the children and later that day met to sign a memorandum setting out matters agreed upon which were to be the basis of an application to the Court for a consent order. The same day counsel for the children wrote to the Court setting out proposals, "more or less acceptable", for the custody of the three children and for dealing with the outstanding domestic protection applications and full custody hearing. Also on the same day Mrs Bristol's counsel wrote to the Court advising that she had instructed him to proceed no further with the non-violence and non-molestation applications and to have them withdrawn. 1.11.93 Counsel for the parties and counsel for the children filed in the Court the "memorandum of consent" signed by the parties agreeing to the making of certain specified orders. On the same day the Court made the orders "by consent". The Court order provided: 9 "1. The child Tiffany will be in her mothers care from gam Sunday to gam each Monday unless noted otherwise below. 2. Claudia will be in her fathers care from gam Saturday to gam Sunday unless noted otherwise below. 3. Holly will be in her father's care from gam Monday to gam the following Monday. She will then for the alternate week from gam Monday to gam the following Monday be in her mother's care. 4. Both parties agree that the school holidays are to be shared in that all three children commencing at gam on Monday will spend a week with one parent. The alternate week will be spent with the other parent. 5. Christmas and birthdays are to be shared together. 6. All other applications before the Court relating to domestic protection and custody and access matters are to be withdrawn. 7. Both mother and father agree that if either parent requires baby sitting assistance then the other parent will be the first port of call. 8. This order is subject to review on or about 14 February 1994." It will be noted that that order of 1/11/93 provided for a shared custody regime. It was not however observed by Christine Bristol for long. 8.11.93 She left Wanganui and went to Whakatane taking the two younger girls with her. The reason given by Christine Bristol for leaving Wanganui was, that Alan Bristol would not accept that the marriage was over and that he frequently arrived at her house and subjected her to physical abuse and emotional intimidation. 11.11.93 Alan Bristol took steps through the Court to have the two younger girls returned to Wanganui so that he could exercise his shared custody in accordance with the Court order of 1.11.93. He applied ex parte for an order granting him interim custody of all three children and at the same time applied for a warrant to enforce the custody order when made. Although the applications were made ex parte copies of all documents were served on Christine Bristol's counsel that same day and Mr Taylor 10 telephoned Christine Bristol and told her he had received the applications. Both of those orders were made by the Court. Christine Bristol on 12.11.93 through a Whakatane solicitor, had an affidavit in reply to Alan Bristol's applications sworn and sent to the Wanganui Court by fax. It arrived at the Court after the orders were made by the Judge. 13.11.93 On this day Christine Bristol having been advised of the making of the interim custody order in favour of Alan Bristol and also of the issue of the warrant returned to Wanganui with the two younger children and surrendered them to Alan Bristol at the Wanganui Police Station. (Thereafter all three children remained in the custody of Alan Bristol). 17.11.93 Alan Bristol fearing that Christine might be about to go overseas with the children made application to the Court ex parte for an order that Christine Bristol surrender the passports and travel documents relating to all three children. The passports had been uplifted from the Court by her on 4.11.93. The Judge declined to make the order sought ex parte and directed that the application be served on Christine Bristol. This was done and on 23.11.93 Christine Bristol consented to an order being made that the passports remain in the possession of the Registrar of the Court. 24.11.93 Christine Bristol applied to the Court for orders: (a) Setting aside the interim custody order made on 11.11.93 in favour of Alan Bristol. (b) Granting her interim custody of the two younger children Holly and Claudia reserving reasonable access to Alan Bristol. (c) Granting her on an interim basis reasonable access to Tiffany. (d) Granting her on a final basis custody of Tiffany, Holly and Claudia reserving reasonable access to Alan Bristol. At the same time Christine Bristol applied ex parte for an order abridging to three days the time within which Alan Bristol should file a Notice of Defence to her custody application. 25.11.93 The Judge made an order abridging time for filing Notice of Defence as sought and directed: (a) That the application (relating to custody) be served. 11 (b) That if opposing the application Alan Bristol should file and serve his affidavit in reply not later than 7.12.93. 29.11.93 Alan Bristol gave notice that he intended to defend Christine Bristol's application for custody and filed his affidavit in reply. The two custody applications thus required a formal hearing by the Court before a decision upon them could be made. 10.12.93 As a formal defended hearing of the custody applications could not be held before Xmas, there was a conference of counsel with the Judge to resolve holiday access of all three children who were in the custody of Alan Bristol pursuant to the court order of 11.11.93. Counsel appeared for the parties and for the three children. The Judge's note records: "Counsel for children to arrange for urgent referral of both parties to a counsellor with a view to, at least, agreed access being decided upon.

Short hearing to be made available on 22 December 1993 in the hope that the parties will then agree on holiday access, failing which, the Court will be able to make orders after hearing the recommendation of counsel for the children. (There will not be time for anything more.) Counsel will try to agree on a timetable order for 22.12.93." 20.12.93 The counsellor appointed duly reported to the Court on an agreed access arrangement. 22.12.93 A memorandum of consent to interim orders as agreed by the parties before the counsellor was filed. The Court then made the following orders: "... By consent the applicant (Christine Bristol) and the respondent (Alan Bristol) shall have access to the children on the following terms: 1. Both parties will share Christmas Day 1993 with the children together at the family home. 2. Each parent will have an equal time during the school holiday period for travelling holidays or the equivalent. 3. The applicant shall have access to the three children for two days and two nights per week from 1 January 1994 12 1.2.94 Christine Bristol filed an application under the Matrimonial Property Act 1976 for orders determining the shares in and the division of the matrimonial property. That was served on Alan Bristol's solicitor on 3.2.94. 3.2.94 Counsel for the children wrote to the Court advising: "Some access is continuing although I understand there is not universal satisfaction concerning same. I am being urged by counsel for the mother to take further steps with regard to the welfare of the middle child ...." Also on the same date counsel for Christine Bristol wrote to the Court: "This matter was last before the Court on 22 December 1993 when interim access orders were made. Since that time there have been numerous negotiations regarding access. In the meantime custody remains in dispute and we would appreciate the matter being placed back into the Family Court fixtures list for the purposes of a pre-trial conference. We seek directions at this pre-trial conference in order to timetable this matter to a defended hearing ...." AT THIS STAGE THE COURT FILE ENDS Summary of the State of the Court Proceedings As At 3.2.1994 The parties had on 1.11.93 agreed upon a shared custody regime and the Court had-made an order "by consent" on the agreed terms. Christine Bristol however on 8.11.93 left Wanganui for Whakatane taking the two younger girls (Holly and Claudia) with her. The eldest girl Tiffany was left in Wanganui with Alan Bristol. Alan Bristol, when he learned that Christine Bristol had gone to Whakatane with the two younger girls, applied on 11.11.93 for and obtained an order in his favour for the interim custody of all three girls and at the same time obtained a warrant to deliver the two younger girls into his custody. In the event it was not necessary to act on the warrant, as Christine Bristol on being advised of the interim custody order and the issue of the warrant, voluntarily returned the two girls to Wanganui on 13.11.93 and handed them 1 3 over to Alan Bristol in whose interim custody all three girls thereafter remained. Eleven days after returning to Wanganui Christine Bristol applied on 24.11.93 to set aside the interim custody order which had been granted ex parte in favour of Alan Bristol and in addition applied for a final custody order in her favour in respect of all three children. Alan Bristol gave notice that he intended to defend those applications and sought orders for final custody of the children in his own favour. With the hearing of the final custody applications being not possible before Christmas the parties on 10.12.93 sought a conference with the Judge in order to resolve questions of access to the children as an interim arrangement. This conference resulted in reference to a counsellor and to negotiations taking place between counsel culminating in the Court on 22.12.93 making a consent order defining on an interim basis the access of the parties to the children over the holiday period. Those arrangements continued in force, albeit not to the general satisfaction of the parties, up until the tragedy occurred on 4/5 February resulting in the deaths of Alan Bristol and the three children. In the result, at the date of the tragedy the only matters then before the Court to be dealt with were: 1. The applications by Christine Bristol and Alan Bristol each seeking custody of the three children, to be decided by the Court after a full hearing to be held at a future date. 2. The matrimonial property proceedings filed by Christine Bristol which had not reached the stage where a date of hearing could be given. The Events Leading Up to the Tragedy I do not wish to dwell at length upon these matters but in order to consider adequately my second term of reference - "As to the need for any change in the law or in Family Court practice concerning any matter that arose in the proceedings" - it is necessary to inquire whether any aspect of the law or Family Court practice was deficient or ineffective and thus causative of the events which subsequently occurred. The actual cause or causes of the tragedy insofar as such can be discerned need therefore to be considered. 14 The narrative of events which follows is based upon my examination of the court files and on my own inquiries of the Police, counsel for the parties and counsel for the child and Christine Bristol, and also from evidence presented at the Coroner's inquest on 3 March 1994 and the findings of the Coroner. The three children were as a result of the interim custody order -made by the Court on 11.11.93 and the delivery up of the two younger children on 13.11.93, thereafter in the custody of Alan Bristol. The parties had subsequently agreed upon holiday access for Christine Bristol to all three children and this agreement was embodied in a consent order made by the Court on 22.12.93. It provided for Christmas and holiday arrangements and from 1.1.94 gave Christine Bristol access to all three children for two days and two nights per week. Those arrangements continued throughout January and early February although not without considerable friction between the parties due Christine Bristol alleged to Alan Bristol's obstructive behaviour and to his verbal and sometimes physical assaults upon her when she was collecting or returning the children. On 29 December 1993 Christine Bristol complained to the Police that when she arrived at the house in Maryland Road to pick up the children, Alan Bristol tried to force her into the bedroom intending to have intercourse with her. Alan Bristol was subsequently visited by a police constable who warned him that a complaint had been made although the matter was not going to be taken further. On 2 February 1994 Christine Bristol again made a complaint to the police to the effect that when she went to the house that day to drop off Holly and Claudia who had been with her for the day, Alan Bristol again assaulted her, this time the assault being accompanied by acts of indecency. The police investigated the complaint and also interviewed an independent witness who corroborated Christine Bristol's account of events. Alan Bristol was arrested on 3 February 1994 and charged with indecent assault and assault upon a female. He was later bailed to appear in the District Court on Tuesday 8 February 1994. Also on 3 February 1994 Christine Bristol's solicitor in response to a suggestion by Alan Bristol's solicitor that there should be fixed access 15 arrangements (instead of the provision in the consent court order of 22.12.93 which simply gave Christine Bristol access for two days and two nights per week.) faxed to Alan Bristol's solicitor Christine Bristol's agreement to such a course provided she have all three children on Saturday and Sunday of each week until 8.30am on the Monday morning. On 4 February 1993 Alan Bristol's solicitor communicated with Christine Bristol's solicitor and indicated that he believed that access should be on Sunday and Monday (being Christine Bristol's non work days). At 11.30am Alan Bristol called on his solicitor and discussed with



another member of the firm the handling of the defence to the criminal charges. He also discussed with his solicitor the proposed new access arrangements. As a consequence of those discussions a fax was sent to Christine Bristol's solicitor confirming that access until further agreement would be on Sunday and Monday of each week commencing next Sunday with Mrs Bristol Senior delivering and picking up the children at the same times as under the current arrangement. At the meeting that day both Alan Bristol's solicitor and the other member of the firm who was to handle the defence to the criminal charges, found Alan Bristol to be calm and rational and he did not appear distressed. When he left their offices at 1.15pm he appeared his normal self. Shortly after leaving his solicitors office Alan Bristol called on a male friend who he had known for many years. Alan Bristol discussed the charges laid against him and was concerned about having to spend 10 years in prison. He left about 2pm. When he left his demeanour appeared quite good and he gave no indication that the tragedy which subsequently occurred was likely to happen. At approximately 2.10pm that same day Mrs Bristol Senior was at the house at Marybank Road looking after the two younger children when Alan Bristol arrived. (I now give a precis of part of Mrs Bristol's statement tendered to the Coroner relating to Alan Bristol's condition and concerns on his return.) He looked shocking. He was white from head to toe; his eyes looked tired; his face was sunken; he looked absolutely dreadful. He was concerned that if he was convicted he could get 10 years in gaol on the assault charge and 20 years on the indecent assault charge. (Those penalties are in fact incorrect.) 16 He was also concerned that the eldest girl Tiffany (with whom he appeared to have a very strong attachment) would be called to give evidence against him and that Christine Bristol had applied to the Court for custody of Tiffany (in addition to the two younger girls). Alan Bristol sat down in the lounge and made very little further conversation and in Mrs Bristol's words appeared "as if he wasn't with us for the rest of the day ... he spent a lot of time just sitting there with his head back and his eyes closed." About 5pm Mrs Bristol prepared a meal and she and Alan Bristol and all three girls (Tiffany had by then returned home) had tea. About 7pm Mrs Bristol left to return home. At that stage Alan Bristol in the words of Mrs Bristol "was still looking like death warmed up, very quiet and very tired." Prior to Mrs Bristol leaving Alan Bristol never said anything to her or did anything that made her think he would hurt either himself or the children in any way. On 5 February 1993 at approximately 9.30am Mr Bristol Senior visited the house at Marybank Road. He found no-one about. He entered the garage and found Alan Bristol and the three children in the rear of a Suzuki hatchback motor car, all apparently dead. \_ Subsequent police investigations showed that the deaths were planned and that the preparations must have taken some little time to accomplish. There was some evidence tending to indicate that Alan Bristol may have belatedly realised what he was doing and tried to take some steps to arrest the procedure he had initiated. The Coroner held an inquest into the deaths on 3 March 1994. His findings were: "... that the deceased Alan Robert Bristol died on the evening of 415 February 1994 at 25 Marybank Road Wanganui as the result of carbon monoxide poisoning, death being self inflicted. The deceased Tiffany Anne Bristol, Holly Alyse Bristol and Claudia Abby Bristol all died during the evening of 4 February and early morning possibly of 5 17 February 1994 at 25 Marybank Road Wanganui, each as the result of carbon monoxide poisoning." The Coroner also observed: "It is to my mind reasonably clear that the deceased Alan Robert Bristol became deeply concerned, to the extent of being one might say, worried out of his mind perhaps, although there is no indication that he was mentally disturbed by the charges that were laid against him a day or two earlier. That presumably was the trigger but one can only speculate." 18

## THE LAW APPLICABLE TO AND THE PRACTICES OF THE COURT

1. The Statutory Provisions and Practices Applicable The statutory provisions applicable to the exercise by the Family Court of its jurisdiction in this case are: The Family Courts Act 1980 The Family Proceedings Act 1980 The Family Proceedings Rules 1981 The Domestic Protection Act 1982 The Guardianship Act 1968. Certain parts of those statutes and rules I now refer to, in order to highlight relevant procedures adopted by the Court which have been commented upon and been considered in my inquiry. First Nature of Jurisdiction The Family Court was established as a division of the District Court (Family Courts Act 1980 s.4). Family Court proceedings shall be conducted in such a way as to avoid unnecessary formality s.10. In all matters in issue between husband and wife in proceeding under the Family Proceedings Act or the Guardianship Act 1968 it is the duty of legal advisers to promote reconciliation and conciliation (Family Proceedings Act 1980 s.8) mediation conferences chaired by a Family Court Judge are provided for (s.14) and it is the duty of the Court to consider reconciliation and conciliation between the parties (s.19). Second "Ex Parte" Applications Family Courts are authorised to hear and determine applications "ex parte". That is to hear and determine them without notice to and without hearing the other party. That power derives from two sources. The first is the Family Courts Act 1980 which makes the Family Court a division of the District Court (s.4) and which authorises a Family Court Judge to exercise any of the powers of a District Court Judge (s.5(4)) and gives the District Court power to hear and determine any ex parte applications relating to proceedings heard in a Family Court (s.15). The second is the Family Proceedings Rules 1981 which provide that an order may be made or a warrant may be issued on an ex parte application made under stated sections of The Family Proceedings Act 1980 and of the Guardianship Act 1968 and in any other case if the Court is satisfied: "(i) That the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship or (ii) That the delay that would be caused by proceeding on notice would pr might entail risk to the personal safety of the applicant or any child of the applicant's family or (iii) The application affects only the party moving or is in respect of a matter of routine or is of so unimportant a nature that the interest of the other party cannot be effected thereby." (Family Proceedings Rules 1981 Rule 16(2)(a)(i, ii, iii) Rule 16 goes on to say that any person against whom an order has been made ex parte under Rule 16(2) may at any time apply to vary or rescind the order. The Family Court Practice Note relating to ex parte applications provides: "Where an application is filed ex parte in the Family Court, seeking substantive orders, particularly under the Domestic Protection Act, it must be accompanied by affidavit evidence, n which fully and frankly discloses all relevant circumstances, whether or not they are advantageous to the applicant. This information will include disclosure of any other relevant proceedings past or present in any court, and the identity of any legal advisor acting for the respondent or for any children. 20 It is not appropriate for counsel to proceed ex parte at the same time serving copies of the application on counsel for the respondent before the application is heard. In every case where an ex parte application is under consideration counsel should decide whether the proper course is not

rather to proceed on notice accompanied by an application for an abridgment of time for a defence to be filed. Where counsel is known to be acting for a respondent or children copies of the application and accompanying affidavits should be forwarded to such counsel immediately upon service of the, order of execution of any consequential warrants." Third "Consent Orders" Family Courts are given power (except in proceedings relating to the status of marriage) to make orders by consent. (Family Proceedings Act 1980 s.170). The reader of this report will have observed that my examination of the court files contains a number of references to the court having from time to time made orders "ex parte" and by "consent". It is quite clear that the Court had power i.e. to make ex parte orders and consent orders. In the case of "ex parte" orders made under the authority of Rule 16(2) of the Family Proceedings Rules 1981 the only pre-requisite to the court doing so was that it be satisfied that the circumstances came within one or more of the provisions in subclause 2(a)(i, ii, iii) of that rule as set out ante. Once the Court was so satisfied, then, it was for the particular judge at the time to decide as a matter of judgment whether he would deal with the matter ex parte and make the order sought or require the application to proceed on notice but abridge the time for a defence to be filed. 21 In the case of "consent" orders, they may be made "by the consent of all the parties to the proceedings". The Court is thus given a discretion as to whether it will make the order or not.

Fourth Enforcement of Custody and Access Rights Where any person is entitled to the custody of a child a Family Court may on the application of the person so entitled to custody issue a warrant to a constable, social worker or person named therein to take possession of the child and to deliver him to the person entitled to custody or to some other named person on behalf of the person entitled to custody. (Guardianship Act 1968 s.19(i)) However where more than one person is entitled to the custody of the child no warrant issued under subsection 1 (ante) shall authorise the removal of the child from the possession of one of those persons and delivery of him to another of them (Guardianship Act 1968 s.1 A). The effect of s.1A is that the warrant procedure cannot be used by one joint legal custodian against another; however it is available whether there is an order granting custody to both parties but at different times i.e. shared custody. Where there are practical difficulties in enforcing the return of a child for a short period, from a distance or where the child is taken away on what appears to be a permanent basis which is really an indication not to be bound by the order another procedure has been commonly adopted. That procedure is for the person whose custodial rights have been breached to apply ex parte for an interim order giving him full custody of the child and upon the making of such order to ask the Court to issue a warrant to take possession of the child and to deliver him to the applicant. Such order for custody is an "Interim" Order only until the issue of custody is further determined by the Court, and the interim custody order having been made "ex parte" may be subject to 22 an application by the person against whom it is made to rescind or vary it at any time. 2. An Examination of the Court's Application of the Law and its Practices in the Bristol Case At the outset of this section of my report I wish to establish unequivocally the basis upon which my enquiry has proceeded. My inquiry is limited by the terms of reference which have been given me. They restrict my inquiry, after an examination of the Court files, to a consideration of "the need for any change in the law or in Family Court practice concerning any matter which arose in the proceedings". I am not empowered to exercise a judgment as to whether the Family Court Judges who dealt with the case were right or wrong in the decisions they made or in the ways in which they exercised the powers given them under the various statutes which they applied. I am not entitled to second guess - or should I say second judge those decisions. I am not sitting as an appellate body. My inquiry is directed solely at whether there is any need for change in the law or Family Court practice. Having made those preliminary observations I now examine the course followed by the proceedings as disclosed by the files. This is necessary in order to see first, what matters arose in the course of the Bristol proceedings that I should consider, and second, whether the legal provisions which the Judges were required to apply were adequate to enable them to deal with circumstances that arose in this case and whether the practices of the court were appropriate or are in need of change. Two main issues concerned the Court in the Bristol case. They were: the protection of Christine Bristol from alleged assaults by the application of the relevant provisions of the Domestic Protection Act 23 1982 and the making of orders relating to custody of and access to the children under the relevant provisions of the Guardianship Act 1968. I do not find it necessary for me to traverse the first file which closed when the parties were reconciled in 1989. The material on that file is merely historical. That phase of the Bristol case was long drawn out. It covered about 31/2 years during which time proceedings were brought before the Court for non-violence and non-molestation orders against Alan Bristol and for custody orders in respect of Tiffany. None of the proceedings ever reached the stage where a contested application was heard and decided by the Court. All matters were resolved by agreement and orders "by consent" were made by the Court. The significance of that is that the Court never had the opportunity to hear the parties give evidence or to test the truth or otherwise of the various allegations made. I commence my examination with the opening of the second file on 13.7.93. It discloses that on 5.7.93 whilst the parties were living at the family home at Marybank Rd, Wanganui Alan Bristol allegedly took Christine Bristol to her parents home and Wanganui, kept the three children at the family home and at the same time told her the marriage was at an end. The important events which followed - omitting those not greatly relevant to the decisions made by the Court are: The first occasion when the problems of the Bristol marriage came back before the Court was on 13.7.93 when Alan Bristol applied for interim custody of the three children. This was opposed by Christine Bristol who sought an order that custody of the children be given to her. A pretrial conference before a judge at which both parties were represented by counsel was held on 28.7.93 and by consent the judge made orders, pursuant to the Family Proceedings Act 1980 s.162 appointing a senior family court counsel to represent the children. He authorised the obtaining of a psychological report on the children directed to custody issues pursuant to the Guardianship Act 1968 s.29A and requested the Registrar to give the case priority for hearing on interim custody. Before custody issues could be brought before the Court, counsel for the parties and for the children discussed arrangements for the interim care of the children and on 11.8.93 the Court approved shared care arrangements to remain in force until further order of the Court. On the same day Christine Bristol applied ex parte to the Court for a non-violence order and a non-molestation order against Alan Bristol as provided for in the Domestic Protection Act 1982 ss.4 & 13. The issue of violence within the domestic scene was once again raised by Christine Bristol - as had been done earlier in the relationship. There were allegations of violence made by Christine

Bristol in her affidavits and denials of violence by Alan Bristol in his. The Court in accordance with its usual practice where there are allegations of violence made an interim non-violence order to protect Christine Bristol to the extent that such an order can provide protection but directed that the non-molestation order application proceed on notice to Alan Bristol. The parties represented by counsel next appeared before the Court on 24.9.93 being the date fixed by the court for the review of the interim non-violence order. At that time a memorandum from counsel for the children was tabled relating to the course that the court might follow in dealing with the matters which were before it, namely: The custody applications by both Alan Bristol and Christine Bristol. The hearing of Christine Bristol's application for non-violence and non-molestation orders which application was opposed by Alan Bristol. The Judge directed that the interim non-violence order continue until the further order of the Court and that the hearing of the Domestic Protection applications (for non-violence and non-molestation orders) be deferred pending the hearing of the Guardianship Act Proceedings (custody). 25 No further proceedings relating to custody came before the Court until 1.11.93 by which time the report sought from the psychologist relating to the custody of the children had been received and considered by all counsel. Prior to that date the parties, their counsel and counsel for the children had all met and discussed care arrangements for all three children and a "memorandum of consent" had been signed setting out agreed arrangements for the care of all three children and requesting the Court to make orders by consent accordingly. It did so. The terms of those orders are set out in full earlier in this report. Apart from defining the care arrangements which established a shared custody regime, the Memorandum of Consent and therefore the order also, provided that "all other applications before the Court relating to domestic protection and custody and access matters, are to be withdrawn". In making that order for the shared custody of the three children the Court was required to apply the provisions of the Guardianship Act 1968 s.23: "Welfare of child paramount - (1) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration. The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child. (1A) For the purposes of this section, and regardless of the age of a child, there shall be no presumption that the placing of a child in the custody of a particular person will, because of the sex of that person, best serve the welfare of the child." In view of the report of the psychologist and the consents of the parties and counsel for the children to the orders sought the court would have had little doubt that the consensual arrangement 26 proposed would best promote the welfare of the children as required by the section of the Act above referred to. That consensual arrangement followed by the court order effectively concluded all matters between the parties then before the Court. Except that the order was to be reviewed on or about 14 February 1994. It should be noted that at the time when the order was made: 1. There had been no formal contested hearings on their merits, of any applications made to the Court. The allegations of violence by Christine Bristol, the denials of Alan Bristol and counter allegations against Christine Bristol remained just allegations and no opportunity had been given to the Court to determine where the truth lay. 2. Both parties and all counsel had received the report of the psychologist who considered both parents as equally capable of caring for the children but preferred ongoing arrangements where the children remained in the family home with the father whilst spending regular time with the mother. 3. That although Christine Bristol had made allegations of violence against Alan Bristol there was no suggestion that the children would ever be in danger of violence at his hands. 4. The Court had been asked to make the order on 1.11.93 with the written consent of the parties after both had been advised by competent senior counsel experienced in Family Court matters and after the interests of the children had been safeguarded by senior counsel having been appointed to represent them. That Court order should have ended the problems of the Bristol family. It didn't. The reason it did not was, according to Christine Bristol, because immediately after the order was made on 1.11.93 problems arose between her and Alan Bristol over the carrying out some of the arrangements agreed upon, Alan Bristol allegedly continuing to harass her and calling at her home on 5.11.93 and assaulting her. On 8.11.93 Christine Bristol left Wanganui with the two younger children and went to Whakatane. After he learned of Christine Bristol's departure, Alan Bristol sought the assistance of the Court to have the children returned to Wanganui so he could resume 27 the shared custody of them which had been provided for in the Court order of 1.11.93. On 11.11.93 he applied to the court ex parte for an order for the interim custody of all three children and at the same time sought a warrant under the Guardianship Act 1968 s.19 to have an appropriate person take possession of the two younger children (then in Christine Bristol's care in Whakatane) and deliver them to him. When that application was made to the Court the only Family Court Judge then available to deal with the matter was one of the three Family Court Judges then located in the central region of the Family Court but who had traditionally a responsibility for the Hawkes Bay area and sat only occasionally at Wanganui. He was temporarily sitting at Wanganui on 11.11.93. Alan Bristol's applications were placed before him to deal with as the matter was regarded as one of some urgency and the Judge who usually sat at Wanganui and who had dealt with the Bristol case earlier was not available. The matter was placed before the Judge as one where Christine Bristol had departed from Wanganui, and on the affidavit evidence of Alan Bristol had done so with the intention not to comply with the Court Order of 1.11.93 to which she had been a consenting party. In point of fact as at 11.11.93 Christine Bristol was not actually in breach of the Order of 1.11.93 as Claudia was not due to be returned to her father's care until 9am on Saturday 13.11.93 and Holly to her father's care until 9am on Monday 15.11.93. But the evidence before the Court was that she had left Wanganui and her stay in Whakatane "has some permanency", and that she would be unlikely to comply with the Court Order of 1.11.93 to give the children into the care of Alan Bristol when required. The Judge because he had not dealt with the case previously, examined the Bristol file and the course followed by the proceedings leading up to the consent order 10 days earlier and finding nothing to indicate any reason relating to the children's welfare or safety why 28 the consent order should no longer be appropriate decided it would be better for the children to be returned to Wanganui. He therefore made the interim custody order in favour of Alan Bristol (to the extent that he did not already have custody) and ordered the issue of the warrant accordingly. The procedure which was adopted of making an order for interim custody followed by the issue of a warrant to enforce it was adopted because there is no procedure provided for in the Guardianship Act 1968 s.19 (relating to the enforcement of custody and access rights) other than by the issue of a warrant to take possession of a child and to deliver the child to the person entitled to custody. In the case of shared custody of a child and especially if the child is some

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distance away from the person entitled to custody, and such person is entitled to custody for only part of the time in short periods (as was so in the Bristol case) it is rather impractical to use a warrant to enforce a series of short periods of custody. In such cases the Court commonly makes an interim custody order followed by a warrant to enable the child to be returned to the custodial parent. Once that has been done the other party can then apply to have the interim custody order varied to enable the shared custody regime to be reinstated or some other arrangement made. Shared custody which usually involves a child being in the custody of each parent for a comparatively short time relies on the cooperation of the parties for its success rather than the enforcement by warrant. The other factor which influenced the Court in making the interim custody order was that on the evidence before the Court Christine Bristol had taken the children to Whakatane "with some permanency" and had thus indicated an intention not to comply with the order for shared custody. In the event the warrant did not need to be executed because Christine Bristol on being advised of the Interim Custody Order and the issue of the warrant returned voluntarily to Wanganui on 13.1.93 and handed over the two younger children to Alan Bristol at the Wanganui Police Station. Now it is a feature of orders made ex parte by a court that the party against whom such an order is made can apply at any time to rescind or vary that order. This is a safeguard against orders claimed to have been wrongly made. Had Christine Bristol been concerned about the safety of her children, she could have applied promptly after she returned to Wanganui on 13.1.93 to have the interim order for custody rescinded. She did not do so however until 24.1.93. On that date she applied to the Court for orders: setting aside the Interim Custody Order made in favour of Alan Bristol on 11.1.93: granting her interim custody of the two younger children: granting her reasonable access to Tiffany and granting her final custody of all three children, reserving reasonable access to Alan Bristol. Alan Bristol gave notice that he intended to defend those applications. The whole issue of custody then awaited a court hearing but this could not be held by the Court before Christmas. Counsel for the parties and for the children therefore on 10.12.93 arranged a meeting with the Judge, (who was the one who had mainly dealt with the earlier proceedings) to discuss access for Christine Bristol to the children over the Xmas period. The Judge directed that arrangements be made for urgent referral of both parties to a counsellor in accordance with the provisions of Part II of the Family Proceedings Act 1980 with a view to, at least agreed access, being decided upon. He also set a short hearing for 22.12.93 in the hope that the parties would agree on holiday access but if they failed to do so the Judge indicated that the Court, after hearing the recommendation of counsel for the children would make orders for access. In the result the parties reached agreement upon access before the counsellor and at the hearing on 22.12.93 a Memorandum of Consent was filed and the court made orders in terms of that consent that: 1. Both parties will share Xmas Day 1993 with the children together in the family home. 2. Each parent will have an equal time during the school holiday period for travelling holidays or the equivalent. 3. Christine shall have access to the three children for 2 days and 2 nights per week from 1 January 1994. 3U That was the last occasion on which the Court was to deal with this matter. Apart from the making of the Ex Parte Interim Custody Order and Order for the issue of the warrant on 11.1.93 all other orders had been made by the consent of the parties. The issues still outstanding before the Court to be dealt with were The separate custody applications of both Alan Bristol and Christine Bristol in respect of the three children: and The domestic protection applications. A subsequent application was filed on 1.2.94 by Christine for division of matrimonial property under the Matrimonial Property Act 1976. 3. Is There a Need for any Change in the Law or in Family Court Practice Concerning Any Matter that Arose in the Bristol Proceedings? Before change can be considered it is first necessary to see whether the law or practice of the Court failed or proved inadequate or ineffective to deal with a situation that arose in this case. In the previous section of this report I have set out in summary form how the Court dealt with the various situations that came before it. If there are found to be any applications of the existing law or practices which caused or contributed to the unfortunate deaths of the four persons in this case or there were any omissions in the law or practices which allowed them to happen then such would provide strong grounds for recommending change. However before I can make any decisions on those matters and decide whether there is need for change I must first decide whether, the existing laws as contained in the Domestic Protection Act 1982 and the practices of the Court were adequate to protect Christine Bristol from the alleged domestic violence to her and next to decide whether the provisions of the Guardianship Act 1968 were adequate to protect the children in relation to matters of custody and access. the deaths might have been preventable it has been necessary for me to endeavour to establish why the deaths occurred 31 and for that purpose to examine in some detail in my earlier narrative the known events which preceded them. Insofar as the protection of Mrs Bristol is concerned the evidence shows that a non-violence order made by the Court under the Domestic Protection Act 1982 remained in force from 11.8.93 until withdrawn by consent on 1.11.93. During that period I find no evidence of violence by Alan Bristol having occurred. Following the withdrawal of the non-violence order on 1.11.93 however, Christine Bristol made one allegation of violence on 5.11.93 supported by a medical certificate as to injuries, and she also made two complaints of violence to the police on 29.11.93 and 2.2.94. The absence of any violence during the period the non-violence order was in force and the allegations of violence after it ceased may be considered to support a view that the existence of the non-violence order had prevented violence. To that extent it does not appear that the application on the provisions of the Domestic Protection Act was inadequate to protect Christine Bristol when an order under that Act was in force. However I doubt whether the powers of arrest and detention provided for under ss.9-12 of the Act provide any great deterrent effect. A breach of a non-molestation order only incurs a penalty up to 3 months imprisonment or to a fine not exceeding \$500. Heavier penalties may be incurred however if assaults are charged under the Crimes Act. Insofar as I must examine the protection of the children and whether the provisions of the Guardianship Act 1968 and the practices of the Court were adequate to protect them from the tragedy which overtook them I first need to know what caused the tragedy - not merely to know what was the mechanism which caused their deaths but why that mechanism was set in train by Alan Bristol and whether any application of the existing law and practices of the Court could have prevented it. Whilst it is not possible for me to be totally satisfied as to why Alan Bristol took the lives of himself and his three children, I believe the answer is to be found in the events which occurred on Wednesday 32 2nd, Thursday 3rd and Friday 4th February 1994 as narrated earlier in detail in this report. Those events were the alleged assault by Alan Bristol on Christine Bristol on Wednesday followed by her complaint to the Police: his being interviewed by the Police on the Thursday and his subsequently being arrested and charged with indecent assault and assault on a female: his being bailed to appear in Court on the

following Tuesday to answer those charges: and his interview with his solicitors on Friday when the likely consequences of those charges were discussed. The evidence given before the Coroner indicates clearly that a great change came over Alan Bristol after he left his solicitors at approximately 1.15pm on Friday and an old time friend nearly an hour later and returning to his home at approximately 2.10pm the same day. There is little doubt that by then he was of a disturbed state of mind - a condition which appeared to continue into the early evening when he was last seen. The Coroner in his findings as noted earlier observed that it was reasonably clear that Alan Bristol became deeply concerned to the extent one might say, worried out of his mind by the charges that were laid against him a day or so earlier. That leads me to ask the question - what Court could when dealing with the issues involved up until the last Court order on 22.12.93 have reasonably believed that Alan Bristol posed a threat to the safety and the lives of his three children. Let me examine the known facts. 1. Although there were allegations by Christine Bristol of violence against her by Alan Bristol and denials of such by Alan Bristol, the Court on no occasion was required to hear evidence and adjudicate on the issue. So to that extent the allegations were unproven. However even if, for the sake of argument the Court accepted there was such violence against Christine Bristol there was absolutely no evidence of any violence against the children. On the contrary Alan Bristol appeared to have a deep affection for them and appears to have been a very good care giver. 33 2. Christine Bristol had no fears that Alan Bristol would harm the children when they were in his care. Throughout the whole proceedings except for the interim custody order on 11.11.93 arrangements for care were always resolved "by consent" and one would have imagined that had there been any such fears, that they would have been expressed in one or more of the affidavits filed in court in relation to custody proceedings and domestic protection proceedings or to counsel for Christine Bristol, counsel for the child or to counsellors or to the psychologist who reported to the Court. 3. Counsel for the children who was appointed by the Court was senior and very experienced in Family Court matters and had a close involvement with the Bristol case over a number of years and he apparently saw no danger in the children being given into the care of their father as has been shown earlier in this report. 4. The psychologist who reported to the Court preferred that the children remain in the family home with Alan Bristol. 5. Neither of the counsel for the parties ever expressed any concerns for the safety of the children at the hands of Alan Bristol. 6. The domestic protection orders which had been made from time to time were discharged or withdrawn by consent, the last occasion being when the Court made the consent order on 1.11.93 one of the terms of which was that all other applications before the court relating to domestic protection and custody and access matters be withdrawn. The withdrawal of Domestic protection proceedings would have tended to indicate to the court an absence of continuing fears of violence on the part of Alan Bristol towards his wife. Now in deciding what a court knew or should have known about a certain situation it is important to realise that a court is dependent for its knowledge of the facts of a case upon the information supplied to it by the parties and witnesses in evidence given orally or by affidavit: in reports supplied to the court such as from psychologists, counsellors, counsel appointed to represent children etc and from inferences properly drawn from that information. 34 In my opinion there was nothing whatever in the material placed before the court from which a Judge could have been alerted to the probability or even the possibility that to give the children into the custody of their father might create a situation of danger for them. The trigger to the unfortunate events on 4/5 February 1994 appears to have been the assault allegedly committed by Alan Bristol on Christine Bristol on 2.2.94 resulting in her laying a complaint with the police, and to Alan Bristol being subsequently arrested and charged with the two offences earlier referred to. The evidence before the Coroner clearly indicates the concerns Alan Bristol had about those charges and the state in which he appeared at his home at approximately 2.10pm on 4.2.94 shortly after a meeting with his solicitors and a visit to an old friend. What he did later that night may not be thought to be violence or assault of the type commonly found in domestic situations. It was not of the same type of violence alleged by Christine Bristol to have been committed against her. In effect however it was the ultimate violence. It appears that Alan Bristol was worried out of his mind and for reasons best known to himself - which one can only guess at - decided to take his own life and to take those of his three children also. There was nothing before the Court which could have alerted it to the possibility of Alan Bristol acting as he did. It might be suggested that had Alan Bristol not assaulted Christine Bristol on 2.2.94 and thus been charged with assaults then he would not or might not have become worried out of his mind and done what he did. But from the court's perspective, Christine Bristol had withdrawn by consent on 1.11.93 all domestic protection applications then before the court. In any event it was not reasonably foreseeable that even if Alan Bristol were to assault his wife and be charged before the Court that that would cause him to act as he did and to take his and the children's lives. If he were to vent his anger on anyone it would surely be more likely to be on Christine Bristol. 35 I commenced this section of my report by considering whether the deaths in this case could have been preventable by any action of the court. My conclusion is that under the law as it presently is and with the current practices of the Family Court the deaths in the circumstances of this case were not foreseeable and were not preventable. They were not preventable simply because the law and practices did not deal with a situation where a parent, although he had allegedly been violent to his spouse or otherwise e~regarded bar ll whof~ls`alts` MA , with him including 'I's children and there was no requirement of the c- ' - law or practice of the Court that it should investigate his fitness to do `r so when faced with an application to make the orders sought by consent. But that conclusion goes only part way to answering the question posed earlier or whether there is any need for any change in the law or in Family Court practice. The conclusion gives rise to the further question of whether had the law and practices been different might the deaths have been preventable - with the consequence that the law and practices should now be changed so as to avoid possible repetitions of the events of the Bristol case in the future. Whether such changes should be made is in my view dependent upon there being a willingness of society to recognise the seriousness of domestic violence and to be prepared to adopt a quite different philosophical approach to dealing with it. The present law and practices are adequate to deal with cases where domestic violence is not an issue but I believe that the increase of such violence over the years, the growing public awareness of it and the recent examples of some of the horrific consequences that have ensued have brought about a situation where there will be general approval for the law to be changed to provide for new rules relating to custody and access to be laid down to deal specifically with the person who uses violence and abuse in a domestic situation. 36 For myself I believe that there should be changes to both the Domestic Proceedings Act 1982 and to the Guardianship Act 1968. What Chanqes Should be Made? Before I consider any changes to law or practice I propose first to

consider what circumstances require change and then decide what changes if any should be made to deal with such circumstances. I do this under several headings. 1. Does Violence to a Spouse Indicate a Potential for Violence to Children? In my examination of the circumstances of the Bristol case and particularly in relation to issues of custody and access I have noticed that no great significance appears to have been placed upon the fact that Alan Bristol was alleged to have used violence to Christine Bristol in spite of the numerous allegations she made and the nonviolence orders issued. It seems as though it was generally assumed that even although Alan Bristol might have used violence to his wife he had not done so to his children and that he could still be regarded as a suitable custodial parent for his children. It was not thought necessary to investigate the alleged use of violence further. The psychologist reporting to the Court apparently did not consider the matter at least it is not referred to in his report and counsel for the children and counsel for Christine Bristol did not raise objections on these grounds when various consent orders were being sought. And of course the matter not having been raised before it the Court did not raise the matter when faced in the circumstances with applications to make consent orders for custody. A study of reported decisions in domestic cases indicates that it is not uncommon for courts to allow a person who has been a spousal abuser to be a custodial parent to a child and that violence towards a spouse is regarded as not necessarily detrimental to being a custodial parent. It also appears to be a commonly held view that it takes two parties to create circumstances resulting in violence and abuse by one party 37 to the other and to use an expression I have encountered in my researches - it takes two to tango. I have wondered how it can be accepted that a person can use violence to a spouse and yet so long as he has no record of violence or abuse to a child or children be regarded as no danger to the child or children if he is allowed to become the custodial parent or even have unsupervised access to them. Various studies from around the world have concluded that children from homes where a wife is battered are in a very high risk category in terms of child abuse. In a study carried out by the US Department of Health Education and Welfare in 1990 half the women interviewed related that their children had been abused by their fathers. (Bowker Arbitell & McFerron "on the relationship between wife beating and child abuse"). In a paper delivered to the (US) National Family Violence Conference in 1984 Starke & Flitcroft examined direct links between violence to children and violence to mothers by screening the medical records of abused children for indications of violence to their mothers. They found that "battering is the most common context for child abuse" and that "the battering male is the typical child abuser". The same authors in a publication "Women and Children At Risk" (1968) found that 45% of children had mothers who had also been abused. A further 25% were identified as coming from families where there was "conflict" within the family. A similar result was obtained in a 1988 study conducted by the Paediatrics Department of Boston City Hospital. In that study 60% of mothers of child abuse patients had themselves been battered. In another study, of a volunteer sample of 1000 battered women Bowker, Arbitell & McFerron found that men who battered their wives also abused children in 70% of the families in which children were present. These findings have been replicated by research in the United Kingdom on child protection 3 8 The findings recorded in the overseas literature have been mirrored in New Zealand. In a study carried out by the National Collective of Independent Women's Refuges in 1991, of the 6668 children who were admitted (with their mothers) to womens refuges in 1990 50% had been physically (non-sexually) abused: 12% had been sexually abused: 80% had been verbally abused and 80% had experienced other forms of abuse, isolation, intimidation and neglect. So far as weapons were concerned 72.5% of children had fists used against them: 22.5% guns: 17.5% knives: 17.5% bottles: 30% by burning cigarettes and 42.5% had been abused by other weapons, including belts, sticks, cattle prods and stove elements. In the recent "High Profiles" child homicide cases (Ratima children, the Poli children, Craig Manakau, Delcelia Witika) the mothers were all victims of spousal abuse. If one accepts as a generalisation that studies show that a large proportion of persons who use violence to or abuse their spouses use violence to and abuse children of the family or the relationship also, one must surely ask the questions: 1. Is there a factor in the make up of a spousal abuser that he has the potential to abuse children also? 2. Can one safely assume that such a spousal abuser will not abuse children where they are in his care after he has separated from his spouse? I do not presume to be able to identify all the possible behavioural factors which cause one person to use violence and to abuse another in a domestic situation but surely elements of power, domination, control, anger and punishment must feature amongst them. There may in some cases be some psychiatric disorder present (probably a small minority) but I do not believe they are by any means the root cause of domestic violence. I believe that in the great majority of such cases the violence or abuse is triggered off by situations arising where circumstances give rise to one or more of the elements I have referred to above. 3 9 I have not in the time available to me been able to conduct more detailed research into any studies which might deal with this particular topic nor to see whether cases in NZ throw light upon it. But this is a subject upon which it may be thought proper to commission further research. It does however seem to me that there is good cause to suspect that factors which trigger off violence in a domestic situation aimed at punishing a spouse when they are living together may also cause violence to children when the parties are living apart even though there was no evidence of violence to the children whilst the parties were living in the same household. Could not a situation which triggered violence when parties were living together also trigger violence if they are living apart if such a situation then arose? Is not the Bristol case an example of that? There was evidence of violence by Alan Bristol to Christine Bristol before and after separation but no evidence of violence to the children. An alleged episode of violence to Christine Bristol occurred on 2.2.94 and Christine Bristol reported the matter to the police, who subsequently arrested Alan Bristol and charged him with two assaults and bailed him to appear in court to answer the charges the following week. The next day Alan Bristol killed the children who were in his custody. Why did he do so? One can only speculate. There was no apparent psychiatric dysfunction. What triggered his actions? In all probability it was something to do with his being arrested and charged and the anticipated effect of his being convicted upon his chance of obtaining custody of the children. Was it that Christine Bristol went to the police with the consequences that followed that caused him to decide to deprive her of her children? Was he seeking to punish her? or had he adopted the attitude - 'If I can't have the children then neither will you?' Whatever the reason Alan Bristol might have had for killing the children does that case itself not provide an example of the risk which may be involved in permitting children to be given into the care of or even allowing unsupervised access to one alleged to have used violence to his 4 0 spouse until such time as one can be satisfied that the risk of harm probably no longer exists. I know that there are those who quite rightly would argue the importance of maintaining the parental relationship between

father and child and in allowing a father to participate to the greatest possible extent in the upbringing of that child but what is in the best interests of the child? Is it not that its safety should first be ensured as far as possible and then that it enjoy the development of a relationship with the father. 2. Do Times of Access and Changeover Times Create Opportunities for Conflict and Even Violence Between Spouses? One of the difficult problems in the case of a broken marriage or a broken relationship where there are children is to make satisfactory arrangements for access to the non-custodial person so as to ensure that antagonisms are avoided at changeover times when there is opportunity for the former partners to meet face to face.

Evidence placed before me indicated that in terms of NZ homicide statistics, domestic violence is a major cause of homicide in NZ with almost half (24) of the 55 deaths in 1993 a result of such violence. As well it was said that approximately 80% of assaults attended by police were domestic assaults and that within the domestic homicide statistics the highest risk occurs during access changeover times. A recent example of domestic homicide during an access changeover is found in the *R v Keoqan* (CA unreported 29.9.93 CA266/93) again the Bristol case is another example of conflict during access changeover. It was on Wednesday 2.2.94 that Christine Bristol whilst returning the children after access, claims she was assaulted by Alan Bristol and reported the assaults to the police with the consequences that then followed. In fact it may be thought that it was the alleged assault on that occasion, and what followed from it, that provides some insight into the reason for the deaths of the children. 4 1 3.

The Current Community Attitude to Domestic Violence I believe that the incidence of domestic violence in NZ has reached the point when the community as a whole recognises that drastic steps must be taken to protect as far as possible those persons at risk whether they be children or adult. Recent high profile cases involving domestic violence have appalled serious thinking people and there is agitation afoot for appropriate action to be taken to curtail it. In considering laws relating to domestic protection and to protection of children in custody and access situations I believe that they are inadequate to deal with the types of domestic violence that we are currently faced with. The present laws and practices dealing with domestic cases where violence and abuse are not factors to be considered, seem to me to be quite adequate. In order to deal with cases involving domestic violence however a completely new social philosophy needs to be adopted. First Domestic violence must no longer be considered on the basis that the other spouse in some way induced or provoked the violence or abuse. No-one has a right to use violence to or abuse another no matter what the circumstances. Domestic violence must not be regarded less seriously than violence committed in a non domestic situation. Second Penalties for violence committed in breach of non violence orders and non-molestation orders should equate with penalties for assaults under the Crimes Act. Whilst I do not believe that deterrence will of itself be sufficient, it must be considered as one factor. A major improvement will only be brought about by such things as anger training and by education aimed at showing young people that violence is not an acceptable 42 form of conduct. I wonder how many children witnessing violence in the home come to believe that such is acceptable as the norm. One only has to recall the numbers of young people brought before the courts charged with offences of violence for whom the plea in mitigation is often made that they came from a broken home and were themselves subjected to violence in their home environment. They would likely carry their notions of violent conduct into their own domestic situation. That cycle of violence must be broken. Third There should be stricter enforcement of laws relating to domestic violence. Fourth In the areas of custody of and access to children, once a person has been shown to have used violence in a domestic situation either to his spouse or to a child or to both, then such person should be presumed (unless exceptional circumstances are shown to exist for deciding to the contrary) to be unsuitable either to have custody or unsupervised access to the child until such time as such person can establish that it is safe for the child to be given into his/her custody or for him/her to have unsupervised access to that child. Fifth It should be recognised that there are danger periods during access arrangements when persons one of whom has been subjected to violence by the other are required to meet at changeover time. Ideally I suppose children should be delivered and collected by an independent person or the delivery and collection should be supervised by an independent person. There may be occasions where that person is a family member but that is not an ideal situation as it would depend on the availability of the family member from time to time and further there may arise friction between that member and the person to whom or from whom the child is to be delivered or collected. A social service officer would appear to be the ideal person. Whether such would be feasible - I have not had time to investigate. 4 3 Sixth Where access to a child is granted to a person shown to have used violence in a domestic situation, it should initially be supervised access until such time as that person can show that it would be safe for the child to allow that access to be unsupervised. The violent person, who has been shown to have used violence to his spouse may well prove to be a good parent who can safely care for the child. But he should first satisfy a court that such is so before he can be given the opportunity to have the child in his uncontrolled care. It would be hoped that the adoption of the principles referred to above would go some way to deterring domestic violence first by reason of the heavier penalties suggested and secondly by sounding a warning to would be abusers in a domestic situation that violent conduct could make it difficult for them to have free control and access to any child should the parties separate and questions of custody and access become issues before the Court. It may be thought by some that adoption of the foregoing principles would be too hard on the violent spouse or that they would deprive a child of the opportunity of benefiting from a close relationship with his or her parent. However I see no middle course which could be adopted if we are to try seriously to reduce the amount of domestic violence we are experiencing in this country and to protect those persons that society deems in need of protection. I recognise that there are strong views held that a child should not be deprived of one parent. A recent decision of the Family Court illustrates this: "The approach is prescribed by law and that is that the welfare of the children is of paramount concern. While the man is a poor partner if he is a good parent it would be wrong to deprive the children of the father as a matter of moral condemnation of him in respect of his conduct towards his partner. Moreover, once the parties have separated, the problem of violence occurring in front of the children may no longer be present. The focus is on the children. All the facts need to be considered. It is usually in the interests of the children to 4 4 have access to both parents. It is a dramatic thing and an extremist thing, to deprive the children of one parent." In another statement the Court said: "Now that it is accepted that the marriage is finished the real question is the quality of the parenting each of these people will be able to offer in the future. As I have already indicated there has been no suggestion that the father's qualities as a parent should be judged by the events between the husband and the wife which led to the recent crisis." I have no great quarrel with the opinions so expressed except to

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say that the question of the safety of the children if given into the care of a violent parent (albeit violent to the other party only) is not really addressed by the Court. The existing laws governing this topic were enacted before cases of violence had grown to the numbers being experienced today. Possibly there are more cases now coming to public notice. I do not know. It seems to be assumed that if one party has shown violence to the other party only - then he is still a suitable person to be given the care of a child or children. In many cases he may be. But I think in order to provide a greater element of safety for the child he should be presumed not to be so until he satisfies a court to the contrary. If one accepts the possibility, even in a small proportion of cases that a person using violence to his spouse may when the parties are separated if the right trigger to do so exists also use violence to a child, then persons who have used domestic violence to a spouse should be screened, as it were, by being required to satisfy a court that it is safe to be given custody of the child or unsupervised access to the child. Seventh The Family Proceedings Act 1980 s.170 empowers a court to make orders by consent. Many orders were made by consent in the Bristol case. This is in line with the philosophy behind the practices and procedures of the Family Court. However where there have been allegations of domestic violence or where such has been shown to have occurred I believe that all persons involved in Family Court proceedings - the parties, their counsel, counsel for the child - psychologists, counsellors and other disciplines reporting to 45 the court should be required specifically to take into account such violence and the safety of the child when considering whether or not the Court should be asked to make consent orders. Evidence given before me has indicated that it is not uncommon for parties who have been subjected to violence may be overborne by the conduct of their partner to the extent that a consent given in a domestic proceeding may not be given freely and of the persons own volition. It is often given after a bargaining session - you agree to this and I will agree to that. What Changes in the Law are Suggested? I do not intend to act as a draftsman and draft suggested law changes but simply to indicate the nature of the suggested law changes themselves. They are: 1. Penalties for breach of non-violence orders and non-violence orders should be increased to indicate the seriousness with which the law regards such breaches. 2. Where proceedings come before the court relating to the custody of and/or access to any child and allegations of violence and/or abuse in a domestic relationship are made the court shall forthwith satisfy itself whether they are true or not. 3. The Guardianship Act 1968 s.23 provides that "welfare of a child is paramount". There should be incorporated a presumption that a parent who has used violence or to a child in a domestic situation is not to be regarded as a fit and proper person to have custody of/or unsupervised access to that child. However such presumption may be rebutted at any time if such parent satisfies the court that it is safe for the child to be entrusted into his care or if there are established exceptional circumstances which require the child to be given into that parents care. (A case of exceptional circumstances may arise if for example the other parent is living in a situation which gives adequate protection for the safety of the child.)



**Christine BRISTOL INQUIRY BY RUTH BUSCH AND NEVILLE ROBERTSON**

I DIDN'T KNOW JUST HOW FAR YOU COULD FIGHT: CONTEXTUALISING THE BRISTOL INQUIRY

BY RUTH BUSCH AND NEVILLE ROBERTSON[\*]

**I. INTRODUCTION**

On 5 February 1994, Alan Bristol and his three children, Tiffany (7), Holly (3) and Claudia (18 months), were found dead in Alan Bristol's car parked in the garage of their Wanganui home. It was established that death had been caused by Alan Bristol connecting the exhaust system to the interior of the car.[1] This was the final act of a sustained campaign of violence and intimidation by Alan Bristol against his estranged wife, Christine.

At the time of their deaths, the Bristol children were in their father's custody, pursuant to an interim custody order made three months earlier.

After public outcry about the killings, the Minister of Justice appointed retired Chief Justice Sir Ronald Davison to conduct an inquiry into the way the Family Court had handled the proceedings between Christine Bristol and Alan Bristol and to consider "the need for any change in the law or in Family Court practice".[2] In his report, Sir Ronald Davison recommended an amendment to section 23 of the Guardianship Act to the effect that:

once a person has been shown to have used violence in a domestic situation either to his/her spouse or to a child or to both, then such person should be presumed (unless exceptional circumstances are shown to exist for deciding to the contrary) to be unsuitable either to have custody or unsupervised access to the child until such time as such [a] person can establish that it is safe for the child to be given into his/her custody or for him/her to have unsupervised access to that child.[3]

Other recommendations called on the court, where proceedings relating to custody and access involved allegations of violence, to satisfy itself whether they are true or not.[4] A third recommendation suggested that where violence by one party has been established, the court should not make "consent" orders until it is "satisfied that such consent was freely and willingly given".[5] The above recommendations have been the subject of some criticism. Certain government members and legal academics have expressed reservations; one view is that there were not enough factual details set out in the inquiry to justify the form and scope of the recommendations made.[6]

The main aim of this article is to supply these details: to fill in gaps about the violence in the Bristol relationship, the children's exposure to such violence and the circumstances under which Christine Bristol entered into consent orders with her husband. With this material fully available, it is the authors' belief that the recommendations made by Sir Ronald Davison will be seen as entirely justified by the facts of the Bristol case.

A second aim of this article involves the authors' on-going attempt to analyse and redefine paradigms about domestic violence shared by some judges, police, psychologists and members of society at large. At the time of this triple murder, for instance, newspaper accounts of Alan Bristol described him as a "devoted father".[7] Police stated that the children's deaths had not entailed violence.[8] The coroner's report stated that the laying of an indecent assault charge by Christine Bristol against her husband had somehow "triggered" their deaths.[9]

These statements highlighted issues that we encountered in our previous research.[10] First there is the view that one can be a killer - a wife killer or a child killer - and still be a good father.[11] Next is the view that the victim "provokes" further - understandable - violence by seeking protection from the justice system.[12] Finally, it is held that one is less of a murderer if one limits one's homicides to family members.[13]

A conclusion we had come to when working on the Protection From Family Violence report was that, if the justice system utilised a more lenient approach toward domestic violence than toward stranger violence, then the system itself pointed to women and children as appropriate and less consequential victims of homicide - and indeed colluded in the violence against them. Over the past several years, there have been several highly publicised murders of children in New Zealand: Delcelia Witika, the Poli children, the Ratima children, Craig Manukau, and Tiffany, Holly, and Claudia Bristol. Each of these murders has resulted in a degree of soul-searching about the nature of our society. In each of these cases a conclusion drawn has been that the murders were unpredictable and therefore unpreventable.

In all of these murder cases, the children's mothers had been the victims of domestic violence. In some cases, the children had also been the object of their killer's violence. In the Bristol case there was no evidence that Alan Bristol had ever previously been violent toward his daughters. However, as is evident from Sir Ronald Davison's report, there was no suggestion that Alan Bristol's violence toward his wife was seen as legally relevant in assessing his parenting abilities. Indeed, at the time of their deaths, Alan Bristol had custody of his children.

Immediately after their deaths, Christine Bristol stated in a press release that she hoped that the results of a Ministerial Inquiry might bring some meaning to the manner in which her children died. In telling Christine Bristol's story we share some of her hope - while acknowledging that the price of such knowledge is too high. Yet we know from our previous work of the terrible continuing price when these stories remain untold.

**II. A FOREWORD TO CHRISTINE'S STORY**

This article is essentially Christine Bristol's story. Where ever possible, we have used her words, recorded during a protracted interview and a follow-up discussion. She has reviewed our draft and commented on it (and some changes were made as a result of this process). In adopting this collaborative approach, we have deliberately tried to "minimise the tendency in all research to

transform those researched into objects of scrutiny and manipulation".[14] We have also attempted to be explicit about our role in the research process, rejecting claims of "objectivity" and "detachment" which have come under increasing attack in critiques of both legal scholarship and social science research.[15] As part of being explicit about the research relationship, one of us (the senior author, Ruth Busch) has prepared the following statement about the origins of this article.

This article arises out of a telephone call made to the Waikato Law School early in July 1994. The caller was a woman with a quiet, hesitant voice: "You don't know who I am but I've been wanting to talk to you for a while now". Working on issues of domestic violence, I knew that this sort of initial connection is commonplace. She went on: "You've done a lot for me recently; I just wanted to contact you". "So", my response was almost light-hearted, "tell me, who are you? What's your name?" "Christine Bristol".

I was immediately alert. "I know exactly who you are. I've wanted to talk to you too, but I didn't want to intrude".

We set up a meeting. I spent the rest of the week feeling that this was the interview I really wanted for our project.[16] At the same time, I dreaded the actual time we would spend together. After all, I have three children and my own fears of losing them. And for Christine there is no longer the possibility of a happy ending.

So I set up a supervision session with a counsellor friend for late in the afternoon, after the interview would be over. In all the work I have done with battered women - even during our research on homicides - I had never felt the need for space to talk about the feelings that would come up for me. But I knew that this interview would be different. I knew intuitively that she would talk about her hopes and dreams for the children. I knew that she would bring her album of photographs - and that too had to be endured.

I was also aware that Christine Bristol was more than just a victim and the subject of a Ministerial Inquiry. This interview needed to work for her too. Part of my job as a researcher was to ensure that she would leave with something more than what she arrived with - more clarity or strength. I had to deal with her as a real person, not as someone important only for her tragedy, nor with fear that her fate could become mine, by osmosis. She had already told me that she had changed her name and tried to start a new life; certain friends and acquaintances had felt the need to distance themselves, to "pariah-ise" her.

She arrived at my office at the set time, a very attractive young woman. She could have been one of our "thirty something" students, eager to learn and please, one for whom over the years I've helped to obtain non- molestation and custody orders. She was shy about feeling over- dressed. Everyone else was in jeans; her unfamiliarity with universities had led her to "dress up" that day, and "make up" also. Later in the day, a law secretary asked me who the attractive woman visitor was.

More than anything, the first sight of her underscored the cliché "There but for the grace of ..." She had become a household name now only because of the murders of her children.

I was reminded that when our report on domestic violence[17] was first published we were criticised for dwelling on "the worst cases". But a Family Court Counselling Co- ordinator told me at the time that in our homicide case studies nothing had singled out those women - before their deaths. They were not the worst cases; there were fifty other potential "worst cases" in her court files, each of which might still result in tragedy.

At the onset of an interview there were the inevitable politenesses. "Did Christine mind that a man participated in the interview? Would it be too hard to describe instances of battering and sexual abuse?" She was surprised and said "Why not?" She seemed wary of a hidden agenda in the question.

"Did she want a cuppa first? Should we stop for lunch?" Almost irrelevant issues postponed our start. But even this stalling could not go on and in the end her story had to be faced.

In this type of work, you hope that you can survive the knowledge that is shared with you. You are given stories by women who have sought you out for a purpose. Your job is to relate their stories with integrity - with the glimpses of their strength and courage and resilience in the face of previously untold horror. As the child of holocaust survivor parents, it is a role I have been prepared to assume since childhood.

### III. VIOLENCE IN THE RELATIONSHIP

Christine Bristol related that Alan Bristol's violence to her began even before they were married. They lived together for about eighteen months prior to their engagement and from about six months into their relationship he was physically abusive to her. On numerous occasions he punched and kicked her and "threw [her] around". She said that the violence would occur every week, sometimes several times a week, and that she had black eyes and other forms of bruising. As well, she said that he often belittled her.

He had to dominate every situation. He just had to have the upper hand. And he used the children, you know - to bargain for time, to bargain for property, to bargain for money.

As a result of Alan's violence towards her, Christine broke off her engagement in December of 1985 and obtained an interim non- molestation order. But she soon discovered that she was pregnant with Tiffany and "because I've always wanted to do the right thing" she reconciled with him. When describing the physical abuse, she recalled:

He was worse to start off with. There were more external injuries, if you know what I mean. Once Tiffany came along he tried to control himself more, to the extent that the injuries couldn't be seen.

He'd sort of get into a rage and then it would intensify to the stage where physically, he would just go white in the face and he'd be heaving. And his eyes would dilate. You know, it was just so fearful; it makes you back into a corner, just to get away from it. And then he would explode. And that was when the physical and mental abuse would come - and the rapings. And yet he would wake up in the morning and it was as if it had never happened. And once he'd done it, he'd always give me a bunch of flowers or something, as if to say, well I'm not really this bad person. I didn't really mean to do it. I'm sorry.

Christine stated that her husband knew exactly where to hit her so that the bruises would not show and told her that it would be useless to tell anyone.

He would say: "It's my word against yours, and who's going to believe you. I'm a business man and I'm from this important family. Just who do you think you are?"

When we asked why she put up with the abuse, Christine said:

He had this sort of force about him that just kept you there, you know. Maybe it was my insecurity.

Christine did separate from Alan several times during their marriage but he kept pursuing her and she returned to the relationship. She described her husband as an extremely jealous and possessive person and said that at times she felt that she was "a caged animal".

He wouldn't let me out. When the phone rang, he would answer the phone. When the mail would come, he checked the mail to see who I was getting correspondence from. In the finish, about the last month before our marriage broke up, I didn't keep in contact with any of my friends, because it wasn't worth the emotional strain. If I was going to walk out the door to go somewhere, he would say "Who? What? How? When? Where?" And this was every time. Like one particular instance I went to a friend's place for a cup of coffee, you know, after I'd picked Tiffany up from school, just to get the children out of the house for a few hours. And within five minutes of being there Alan rang. "What time are you coming home? When's dinner going to be ready?" Any excuse to draw me back home again. It wasn't worth it.

Alan's intimidatory and violent behaviour was reported to the police "about a dozen times". Sometimes she called the police: on some occasions, her brothers did. Christine felt that the police "weren't really interested", despite seeing, in some instances, bruises and strangle marks.

One time when I was strangled - Alan was strangling me in Puriri Street - the police said, "Just get your things and leave. Just take the child and take her things, your things and just leave. Just don't provoke the situation any more".

In 1989, during one of the periods of separation, Alan was arrested for being unlawfully in an enclosed yard. "He was knocking at my doors and windows". Another time during that year, there was a barrage of anonymous telephone calls and a mysterious arson attack on her new home.

There were no other suspects. And of course (the police) knew it was Alan ... The detective who was in charge ... he was on to him. He actually had Alan under surveillance every Friday and Saturday night because it seemed like he was always doing something then.

The fire was definitely arson. Someone had used petrol and newspapers out of the letter box to start it.

I stayed in that place for about two weeks but the phone calls were getting too much. They would start just as soon as I'd arrive home. I knew Alan was following me around town. It was like everywhere I looked the van was there. Or my friends were saying, "Oh Alan was just in here".

Christine told us that generally Alan was a very good father. But she added:

There were some times when I felt frightened for the children - like they would push him too far and I could see him getting in a state. But he seemed to be able to control that better with the children than with me.

The pattern of physical abuse, intimidation and belittling continued until 1993 when she resolved to change it. When asked why she decided finally to split up with him, she replied very quietly:

It was the abuse, and I couldn't stand the pain, the mental torture any more.

I wanted to stand my ground. I'd had enough. It was just eating away and I felt, as a mother, it was reflecting on my capabilities with the children. I'd lost all my respect and also I felt Alan just didn't have any respect for me. I was taken for granted and I was constantly manoeuvred like a toy. It was like "do this, do that". Oh, I can't explain it. And when I did what he wanted, he would reward me materially. But to me - I said to him, I don't want that. I just want to be loved. I just want to be treated with respect. But at the end of the day, he thought that he was going to win me over materially.

#### IV. THE MARRIAGE IS OVER

Christine described the night before they separated for the last time on 4 July 1993.

It started at 7 o'clock at night and we blew right through the night. He was beating my head up against the wall. But it was in the places that can't be seen. I had bruises at the back of my head and chronic headaches. And for some hours we were sitting there in silence and I was too frightened to move. And then he would go to sleep and I didn't know whether to pack my bags and go, or whatever. I was frightened for the children too. Because he still wanted to have this controlling lever that he could separate me from the children every time. You know we both loved our children dearly. But that was his control over me. He would use them to manipulate me.

The morning we separated he said, "Right, are we staying in this marriage or not?" And I said, "No, I can't handle it any more".

He said, "Right, get your bag". And he threw all my clothes around and he ripped off my wedding rings and things and he flushed my contact lenses down the toilet. And I don't know what the wedding rings signified - he had to keep them. He had to - you know - dominate. And that morning the children of course woke with all this going on. And he put a video on and put them in the lounge. And I said, "I'm not going without the children". He said, "Oh yes, you are. Get in the car now". And of course I had this all night, I was emotionally exhausted, physically drained. And I said, "What are you going to do?" And he said, "Well just get in the car. I'm going to drop you off at your father's; you can think about it for a few days". So we went. He locked the children in the house - this was at 7 o'clock in the morning and drove me round to Dad's place, threw my bag on the ground - Dad and my stepmother were standing at the kitchen absolutely astounded with what was going on - and Alan just drove off. And that was it. And I didn't hear anything at all through that day. All I wanted was to be with my children. My youngest child was only 10 months old. And Alan didn't know how to make up milk formula. He didn't know what foods to prepare. Because I was the wife; I took care of the home, the children, everything.

It was mid- term break and they had had house guests whom Alan had thrown out at about 11 o'clock the previous night. "My best friend was staying with us with her son, who's my godson. He's 13 and he was petrified".

And Brenda[18] didn't know whether to ring the police or what. Instead she got in touch with my father. She was very fearful for herself. She had heard all the goings on. And a lot of it had happened down the passage way. And Tiffany and Holly were just standing there watching. They were shocked, absolutely shocked. The look on their faces ... and Tiffany was crying. Holly didn't really understand. Well, she was beginning to understand. And Brenda obviously realised all this, and shuttled them away. But she didn't really know what to do herself.

Even after describing this scene, Christine minimised the degree to which her children had witnessed spousal violence:

They were just typical, happy- go- lucky, very loving children, you know. We usually kept our differences behind closed doors. They never usually saw it. If we had something that we really had to fight about, we went to the bedroom or we just went where the children weren't.

Given that we had just completed an article on the effects of spousal violence on children, entitled "Not In Front of the Children", her statement hung chillingly in the air.

## V. APPLYING FOR PROTECTION ORDERS

Christine said that she applied for protection orders "off and on" for years. Sometimes Alan would convince her not to proceed. He'd say, "I'm not really this bad person. What's the point of going ahead with it? I haven't hit you for a while". And I'd be questioning myself. You know, like I knew it happened but I'd give him the benefit of the doubt. He won't do it again. He's learnt. If I don't provoke him, then he won't do it. He'd say, "Why proceed with it? I'm not going to touch you again".

At other times, she obtained a non- violence order, but the non- molestation order application never seemed to be dealt with. My lawyer[19] and counsel for the children seemed to reckon that a non- molestation order would interfere with the custody arrangements. And I would say, "I'm getting these phone calls, he's following me around". But they felt that the children were the key issue. My lawyer would sort of smooth the whole thing over, like "We've got to deal with access and custody first". But I needed the protection in place straight away and I was the children's mother and indirectly - you know - it all ties in with the children. But they couldn't see that. And the non- molestation order thing just seemed to be put on the back burner. "It's not as crucial as sorting out the children, you know". Which I agree - but if I'd had that protection right in the beginning, I don't think it would have got so out of hand ...

Christine's lawyer also suggested that they hold off on negotiating a matrimonial property settlement "until the children were sorted out".

It was only after I saw (the new lawyer) and she said, "You could have done that right from day one". But I thought that you had a process that you had to go through first. I didn't realise you could get the property issues on the go. And it would have helped the children settle with me, you know. Because I was in this strange house and nothing was familiar to them. And Alan had that advantage of the family home where all the surroundings were familiar, their own beds, and toys and whatever. And I had to start from scratch.

I think it was one of his tactics - to squeeze me so tight that I would go back. If life was just too difficult financially or materially on my own, I'd have to go back.

Christine's perception that her non- molestation order applications "seemed to get lost" is substantiated by court documents. On 11 August 1993, Christine had applied ex parte for non-violence and non-molestation orders. While she was granted a non-violence order that day, the judge directed that the non- molestation application "proceed on notice to Alan Bristol at a date to be fixed after counselling of the parties has been completed". It should be noted that the provisions of the non- violence order offered her no protection from Alan's repeated telephone calls and his stalking of her.

On 13 September 1993, at a conference of counsel convened by the judge, counsel for the children filed a memorandum which urged placing the non- molestation order application in limbo until a resolution of the custody issues was achieved. This proposal was adopted by the judge on 24 September; he ordered that the hearing of the non- molestation order application "be deferred pending hearing of the Guardianship Act proceedings".

A perusal of counsel for the children's memorandum of 20 September 1993 offers insights into the paradigms about domestic violence which all too often have been accepted by our courts. Christine's need for protection from Alan's intimidatory behaviour was deferred indefinitely. Moreover, Alan's abusive conduct was seen as irrelevant to the issue of custody, both in terms of the deleterious effects on the children of witnessing such behaviour and also in terms of his undermining of her parenting abilities through his actions. What was prioritised was the minimisation of "parental hostility".

Counsel for the children's memorandum stated, in part:

2. I submit that any public hearing would only exacerbate their [the parties'] polarisation and such would be of no assistance in their common dealing with the children. It is obvious that the children are going to be shared above the norm, and an atmosphere embittered by parental hostility will not be in the best interests of the children.

3. Mr and Mrs Bristol separated previously. They have previously filed papers and allege the same faults this time as they did last time. Without making any attempt to comment on the veracity of those allegations, I can only submit, that without the matter being contested in Court, the parties reconciled and appear to have lived happily together for the intervening years. Two more children have been added in that time to the family.

4. With respect, I doubt that the veracity of the allegations made will affect the decisions on the day- to- day care of the children. I note that Mrs Bristol makes no allegations against her husband in his role as a parent, in fact the reverse.

The priority in this memorandum appears to be achieving agreement above all else, principally by avoiding anything which might upset Alan (for example, by not making protection orders against him). By using such terms as "polarisation", "parental hostility", and (non-specific) "allegations", counsel's memorandum effectively minimises, trivialises and renders invisible Alan's violence. At the very least, the violence is reduced to the level of bickering in a dysfunctional relationship. The memorandum also appears to attribute equal responsibility to the parties for the difficulties in reaching a negotiated settlement. On the other hand, if an alternative paradigm was adopted which placed priority on safety and which focussed on the controlling nature of

Alan's abusive behaviour, his violence would be recognised as the principal difficulty in achieving a safe and freely negotiated agreement on custody and access. Seen from this perspective, effective advocacy on behalf of children requires confronting the violence and ensuring that the victims of violence are afforded protection.

## VI. ACCESS CHANGEOVER TIMES AND A FLIGHT TO WHAKATANE

By the end of September 1993 Christine said that something always happened on access changeover times, "and it just seemed to get worse and worse and worse".

He would do things like park up the road on a rainy day, so I couldn't tell whether they were there or not. And he wouldn't let the children out of the car until I came. And I would be going backwards and forwards up the driveway. And I felt threatened about that, because those were the times he got threatening, but not to the stage where he was physical. Just threatening words. And I thought I don't need that because it's too enclosed. I need to be where it's more public - out. It was like he was trying to control me in my own place.

She then described a scene that occurred during one access changeover time where there was a "tussle" over Tiffany, "like he was pulling her in one direction and I was pulling her in the other".

And I thought, "I'm not going to put this child through this". Because you could see it on her face. ... And you know, I just felt so bad for her. I wanted her, as a Mum, I really wanted my child. But it wasn't worth putting her through this really explosive situation. You know, you could see it destroying her. It was bad enough the separation, yet the access time just seemed to be more intensified.

So, of course, I gave in every time, because it was Tiffany I didn't want to suffer at the end of the day. It was Tiffany he seemed to have control over. And he didn't want to lose that control. And he was trying to squeeze me out of her life virtually in the finish. I saw very little of her, right from November onwards, which was the most distressing thing about this whole thing. And yet the law didn't help me.

Deep down I thought, well why provoke the poor child? She's only seven, and I'm going to screw her up by keeping this to-ing and fro-ing. And it seemed like the more I fought for her the more Alan was keying in on her mind. So I thought, well, give her a chance. Let her breathe ... but the law wasn't helping me. The lawyers weren't helping me.

Christine's relationship with Tiffany had really begun to deteriorate by this point.

Tiffany and I had some terrible fights. She would go quiet and then she would say, "I hate you, Mum. Dad says that you have another man. Dad says this, Dad says that". And I said, "Tiffany look, do you see another man here? Have you seen me with another man?" Somehow or other Alan convinced her that there was a man out there, that there was another person that was taking her mother away from the family.

On 1 November 1993, consent orders were made in respect of custody. The orders provided for a shared custody regime with Tiffany being in Alan's care (except from 9 am Sunday to 9 am Monday each week). Claudia was to be primarily in Christine's care (except from 9 am Saturday to 9 am Sunday when she was to be with Alan) and Holly was to be with each parent on a week about basis. School holidays, birthdays, and Christmases were to be shared between the parties. At the same time, the protection order applications pending before the court were withdrawn. The orders were to be reviewable on 14 February 1994, ten days after the children's deaths.

Christine noted that Alan suggested this custody arrangement and she recalled why she consented to it. He had told her:

"If I keep Tiffany with me then that will curb the problem with her". "But," I said, "You've turned her against me". And he said, "Well, why provoke it any more, just let it be. She wants to be with me". And I thought, well, I don't really want to stir her up and screw this poor little seven-year-old up again.

Anyway, he said, "Well, you can have Claudia and we'll have Holly go week about. But I will agree to that only if you uplift these protection orders. And I'll give you some money". I was on the bones of my backside and I desperately had to pay off these bills. And I agreed because I wanted to see the children. I needed to see them week about and I was feeling like I was losing my motherhood, you know.

But if Christine hoped that consenting to Alan's proposal would guarantee her at least some contact with her children and a chance to rebuild her relationship with them, that hope was soon shattered.

We signed the consent order on Friday, the 1st of November I think it was. And on Saturday he had the children and he said, "I'm not happy with this". And of course immediately I felt threatened. I'm not going to get the children back again, you know. And on the Sunday morning we were supposed to have the changeover time, that's right, at 9 o'clock on the Sunday morning, and he came up the driveway and he wanted to come into my house to get one of the children a drink. But I wouldn't let him inside the house.

You know, I just feel like as soon as Alan's inside the door he sort of thinks he can come and go whenever he likes. He's done this in the past. And I thought, no, I'm having control here. And anyway, one of the children said, "I'm thirsty" and I said, "Oh, just a minute". And they were all playing around on the balcony area there. And I went and got a drink and came back out and he said, "Well, why won't you let me in? Are you hiding something?" You know, he kept pushing, pushing, pushing.

Christine said that she had just obtained a job waitressing and she felt that Alan was threatened by that as he thought that she was going to meet somebody else. "I think he still had it geared up that I was just going to come back because I had done it in the past".

And he was especially pushing this bit about the job. "You're going to meet somebody. Are you wearing a mini skirt? And are you doing this?" And you know, "You're going to look a real tart" and whatever. And I really felt quite horrible about it.

He was standing on the balcony and there are two big high fences along the side, so people couldn't really see us. And this is where I felt threatened. Because it wasn't public enough. Anyway, we were on this balcony by the front door and he slammed me up against the wall. And he said, "You're just a big tart". And that's when I got a big bruise on my arm and I got another one on my leg. And he just sort of threw me round in the doorway. I made out it didn't hurt. I didn't want to give him the satisfaction.

Because once he knows he's got into your mind or physically dominated you, he seems to just run away with the whole situation. And I thought, no, I'm going to stand my ground.

Christine then picked up Holly and Claudia and Alan said, "Tiffany's coming with me".

And before I knew it, you know because I had my arms full, he'd driven off with her. So I just went inside with the younger two. Christine considered laying a charge against Alan for the assault but decided against it.

I was hoping that Tiffany was going to be returned and I would have time with her but she never was. If I laid a charge, that would get Alan's back up again. And he seemed to be winning every situation and I thought, well, he's definitely going to dominate if I give him ammunition. So I thought, well, I'll hold off this time and maybe he'll come to his senses and give me Tiffany again. And I didn't want him to manipulate the situation to make me out to be the big evil. And that's what he did. So instead of laying a charge, on 8 November 1993 Christine left Wanganui with the two younger children and went to Whakatane.

I thought, I can't handle this any more. Nobody's going to listen to me. And I rang the children's counsel, and I explained what was going on and that I needed, you know, this protection. It wasn't good for the children to see this type of thing. And it wasn't good with Tiffany coming and going. One minute thinking she was coming with me and the next minute being pulled away. And probably to hear criticism of me as well, you know.

Christine hoped that her move to Whakatane would be a permanent one. "I was suffocating in Wanganui". She went to the home of Brenda's parents, people who had looked after her after a bad beating years before. But, three days later, on 11 November, Alan applied for an ex parte interim custody order in respect of all three children as well as a warrant to enforce that order.

Though the applications were made ex parte, copies of the documents were served that day on Christine's lawyer in Wanganui who contacted her immediately. With the help of a Whakatane lawyer, Christine prepared an affidavit in reply to Alan's application. It included a medical certificate prepared by a Whakatane doctor describing her bruising.

The affidavit was faxed to the Wanganui Family Court on 12 November but arrived after a judge had granted the ex parte custody order to Alan.

Christine returned Holly and Claudia to Alan the next day.[20] On the advice of a police officer friend, Christine arranged the changeover to occur at the Wanganui Police Station. It was probably a wise precaution: despite the presence of a senior officer Christine felt intimidated by Alan's shouting and abusive behaviour. And, as she noted, that was the last time she had any of the children in her care.

It should be noted that, at the time of the granting of the ex parte order, Christine was not actually in breach of the consent orders made on 1 November. Although she applied for interim custody on 24 November, the children remained in Alan's custody until their deaths. In Christine's view, the making of the interim custody order in Alan's favour substantially altered the dynamics of the family situation in that he was largely able to dictate the terms and conditions under which she had access to or contact with the children.

On 1 December, Christine began to flat with Ian, an old school friend who was also a policeman. She felt that she would be safer there. As she was strapped financially, she could also share house expenses with him. Ian had children of his own and a girlfriend but Alan obviously felt threatened by the new arrangement.

Christine didn't see the children again at all until Holly's birthday on 11 December. "I was desperate to see them".

And I said to my lawyer, "If Alan can get an ex parte custody order and get the children, why the hell can't I?" And he said, "It's crazy, you know. You're just tussling against one another". But I said, "I want to get my children back". And it seemed like all this time went by, and he said, "I'll get it worked out. I'll do this, I'll do that". But nothing was happening. So then I switched lawyers. And when I signed the paper to get my file released, I had this horrendous bill. And there was a time delay in that. So everything was delay, delay. And I said, "Look, Holly's birthday's coming up. I desperately need to have time with the children, to celebrate her third birthday with them, without Alan".

So we went to court and I was to have all three children for the afternoon of Holly's birthday and that's when Alan held Tiffany back again and said, "She doesn't want to see you". So I just took the two children. I didn't want a fight. I didn't want to provoke anything. I just desperately wanted those three children. I hadn't seen them since mid November and it was now mid December, a month. So we had a lovely afternoon and I only had them for the afternoon and I took them back at 5 o'clock.

There was no court time available prior to the Christmas recess but, on 10 December, a conference of counsel with the judge was held to attempt to resolve the issue of access over the holiday. At the request of Christine's counsel, counsel for the children also attended.[21] It was decided by counsel at the conference that both parties should urgently be referred to counselling so that an access schedule could be agreed to.

One of the issues in dispute concerned the arrangements for access changeovers. Christine and her counsel repeatedly sought arrangements which would have afforded her some protection. One suggestion was for a neutral access change-over place.

Another was for Christine to have someone accompany her if she was to go to the relatively isolated family home to collect the children. A third was for someone other than Christine or Alan to transport the children. Alan strongly resisted each of these suggestions, despite the argument that having a neutral person involved would provide a measure of protection to him by reducing the chances of Christine making "false" allegations against him.[22]

As Tiffany's birthday was on 18 December, Christine wanted to work something out that day.

We were negotiating in a little lawyer's room at the courthouse. We were actually going to go into court but the judge's time ran out. So we had my lawyer, Alan's lawyer and the children's counsel and we only had so much time, so we had to make a decision. And it felt like Alan's lawyer and the children's counsel were saying, "Right, we've got so much time, take what you can get". And Alan was dominating the whole argument. "You can only have them for the afternoon. You're not having them overnight. And you're only going there when Ian hasn't got his children there, and Ian's not allowed to be there, and you're not going to go anywhere else, and you're not to ...".

He just controlled the whole thing. And I tried to stand my ground and I said, "What's one night? Just let them stay the night". I tried to get more time. As it turned out, I only had them from midday till about six o'clock, I think it was. In the finish, even my lawyer thought, "Well, you better take what you can get".

Christine remembers Tiffany's birthday as "a great afternoon".

Tiffany was a little bit strained to start with but then she came back to her old self. And then as time went on she started closing up again. It was like she was switching off and on. I felt so helpless then. I feel that she would have needed serious help to overcome the psychological damage she had suffered. I could see her taking on a lot of Alan's character actually, being able to switch on and off and adapt to certain situations. Like she put up a front in front of her friends as if nothing was wrong and that she didn't care about her parents being separated. And that she was fine. "And look what new toy I've got. Whatever I want I can get".

On 22 December, a further consent order was filed covering access over Christmas and the school holidays. Christine consented to both she and Alan sharing Christmas Day with the children together at the family home.

I was expecting us to come to an arrangement where one had them in the morning and one in the afternoon but he wouldn't agree to anything. And then I just thought, "Oh, what have I got to lose?" And I said, "Why don't we all share the day together in our family home?" That's the only way I thought I'd get Christmas with the kids. And he said, "Yes". So we did. And we had an absolutely beautiful day.

## VII. CHRISTMAS 1993

I got there about 9 am and I was to go at 5 pm but in the finish he said, "Why don't you stay for dinner?" So I stayed for dinner. And then we got talking about things. And then the reconciliation issue came up. And I was looking at the children all night. We had such a beautiful day together. And I said, "I need a couple of days to think about it, a couple of weeks. Just don't push". But I knew that I couldn't handle Alan any more. I just couldn't live with him again. I just didn't have what it takes to carry on with the marriage. I loved him but he'd broken me completely. I'd just had too much upheaval over too long a period of time.

Christine, Alan and the children also shared Boxing Day together "but a little bit more tension crept in".

He kept the pressure up, you know. Consider it; look at the children. And I could feel it. I was getting tense with the whole thing. And he was gaining control again.

Alan asked her to stay over again. "What's one more night and the kids like it so much". She agreed and went up to the second bed in Tiffany's room "but five minutes later he came up and sat beside my bed and I knew I wasn't going to get any sleep and I could feel the tension".

The two went downstairs and when Alan went to answer the phone ("It was obviously one of the women that he'd been seeing"), she got her things together. When he hung up, she told him "My answer's, No".

For the next two days, Alan rang Christine repeatedly. On 28 December, she went alone to collect the children. When she arrived Tiffany was at a girlfriend's house and the two younger ones were asleep although Claudia woke up when Christine arrived. She decided to come back later to get the children.

And as I was walking out he put Claudia down on the floor and grabbed me from behind and dragged me up to the bedroom where he tried to rape me. He had his knee up here against my neck and he had me pinned down on my head. And the verbal abuse was flying. And I was just struggling, trying to get free. I just didn't want him to do it.

And of course with the struggle, that obviously woke up Holly and she came in and, well, she really didn't understand what was going on. At first she was laughing. She thought we were playing I think. But then she realised because I was crying and he was knocking my head into the side drawer of the bed, the corner of the drawer. And then Holly was hitting Alan.

I said to him, "Look what you're doing. Don't do this in front of the children". And it didn't register with him straight away. But within, I would say about 30 seconds, which seemed like an awfully long time with what he was doing, he must have realised what he was doing. Holly was standing there staring at him. I can't really remember what Claudia - the baby - was doing and he loosened his grip, and I just ran out of that house as fast as I could. I didn't even bother looking back.

And of course I missed out that access time.

Christine said that the first access time in January went well but the second one involved Alan holding a knife to her throat.

I went out to the house to pick the children up, and it was like nobody was there, you know. And the door was open, so I walked in. And then he just jumped, sort of out from the kitchen into the hallway and just pulled me in and said, "I want to talk to you". He was angry right from the first minute and it just seemed to grow worse and worse and worse.

After the previous assault, Christine had gone to the police and laid a complaint. Alan had been away with the children but, by the time of this access visit, he had been interviewed by the police.

And he was furious about that and obviously the first changeover time he didn't know that I'd been to the police. And he gibbered on a fair bit and he had this knife. And he actually had me round the throat. But we calmed it down through conversation. And I left with the two younger ones.

The three children were watching television in the lounge during this scene.

When asked how she was able to "neutralise the situation", Christine said "by making promises".

He kept saying that we should spend more time as a family together. More time for the sake of the children. And I said, "Yes, we'll talk about it, but not just now".

He wanted the ideal family. Perfection. He always said to me, "We've got a successful business. We've got a beautiful house. We've got three beautiful children. What more do you want". You know. And I said to him, "It's not what money can buy".

Christine did not report the January incident to the police. They had not proceeded with the complaint concerning the December assault because Alan had denied it "and I had nothing to back up my accusation". After the January incident, she recalled, "I thought now who are they going to believe? It's his word against mine again".

The psychological pressure on Christine from July 1993 onwards took its toll. She became quite sick. "So thin, and all my hair fell out". She lost about two stone "and then I lost more weight after they passed away".

## VIII. 2 FEBRUARY 1994: THE LAST ACCESS CHANGEOVER TIME

With pain and tears and many silences, Christine began to describe the events of 2 February 1994, the last time she saw her children alive. The room became even more silent and we no longer made any eye contact with each other. Each person seemed to focus fixedly on the floor.

Well generally Alan was trying to squeeze me out of the access time. And I was supposed to have the children two days and two nights a week. But we didn't have them as fixed days. So he used that to his advantage. And generally one week started flowing into the next week, and I didn't have the children. And I was ringing the lawyer every day. And she was trying to arrange times. Well, it all just mounted up to what happened in February, the indecent assault. It was only after that happened - you know, when I complained about it to the police - that we (my lawyer and I) decided, "Right, that's enough ... no more access without supervision". We were going to make fixed days ... And Alan's mother was going to pick the children up and drop them off. Before 2 February, Alan had insisted that Christine come to the former matrimonial home to pick up and drop off the children. Because she was afraid ("the house was down a long road and very isolated"), she tried to have someone else accompany her in the car.

But Alan would ring me up and say, "Don't bring anybody out again, or you're not having the children". He jumped up and down about it so much that my lawyer said, "Look, let's just keep the peace here".

Around this time she got to the point where

I didn't care in the finish what happened to me. It was worth taking the risk every time, just to see the children. In fact, I got sick of going to the police. But he was getting worse.

When asked what did she mean by "worse", she said:

He seemed to be taking out more sexual frustrations on me as well. And it was more malicious. He was pinning me down more and just very ... it started getting more sexual ...

I think he felt he was losing control of me. And in the finish, he could see that I had let Tiffany go. And even though he did have total control over her, it wasn't enough. So he was trying it on Holly, trying to do it with Holly. But obviously he was getting frustrated with her, because of her age. And because I was starting to get stronger within myself. I had a job and I had new friends. And I was starting to expand myself; I think he felt threatened with that. So he was getting frustrated, to the extent that it was like he was getting physical every two weeks - whenever he had an opportunity when nobody else was around. Which seemed to be when I was to go to the house, a very isolated house, to pick the children up.

I was returning the younger two children to the house. Alan wouldn't let me have Tiffany during that access time. He claimed she didn't want to be with me. I had to start work at 5.30 and I had to drop the children off at 5.00. So I was up at the house right on 5 o'clock. I remember just driving up to the top of the drive. And Alan was shutting the garage door. And Tiffany was inside and her friend was in there as well. I took Claudia's car seat out and Alan took out Holly. As he was taking Holly's car seat out, my driver's window was down. And he put his hand in and grabbed the keys out of the ignition. And he held them in his hand. And I said, "What are you doing?" And he said, "Who's this lawyer friend?" There was a friend that was taking me out and he was a lawyer. But there was no relationship, no involvement. He was just a friend. And anyway, I didn't know what Alan had heard. Christine broke off her story, looked around and said: "This is pretty horrible".

And then he pushed me up against the wall and then he said, "Who's this lawyer friend?" And I said, "I don't know what you're talking about". And he said, "Stan". And I said, "Oh, you've got it wrong. He's just a friend". And then he lifted up my skirt. And he said, "Has he been here?" And he ripped my underclothes and said, "Has he been here?" And he grabbed my breast and twisted it. And so of course I struggled with him and tried to get my keys back. The whole time I was trying to peel his fingers back and get the keys, and he was just pushing me up against this wall, and kept knocking my head against it. And that's how I whacked my elbow and it came up pretty sore and it was bleeding. And I kneed him. And punched him in the nose. And gouged him in the eyes - I did everything I possibly could. And the hand that he had my keys in - I actually got him round the wrist with both my hands and slammed it into the wall. Which is a roughcast wall, and it made all his knuckles bleed. And that's the blood I had on my shirt, along with what was on my elbow, and my nose was bleeding.

And I was crying, and Holly was beating Alan. And Tiffany was in the kitchen. It's like a glass house kitchen with tinted windows and Claudia was crawling along the bench. She was half out the window. And Tiffany was just staring out with this glazed look, in disbelief really, I think, but she had a funny grin on her face like I'd never seen before. Her friend Lisa was absolutely horrified. And Alan just kept going and going and going.

And he said, "Well, why don't you step inside and we'll talk about it?" And I said, "I'm not going in. Just give me my bloody keys". And he said, "Well, say please". And I said, "Please" and he just held his hand out like that. So I grabbed my keys and hopped in the car, wound the windows up and locked the doors. And Tiffany came running out and stood by Alan's side and Holly was crying. I don't know where Claudia was. And all I could hear him saying to Tiffany was, "See what I mean about your mother. See how crazy your Mum is". It was just incredible. She was just standing right next to him. And he said, "Look at her!" And Tiffany was watching the whole thing that was going on. She didn't say anything. She just had this peculiar look on her face. But her best friend was standing next to her absolutely horrified. And Tiffany - like emotionally she was torn. And she didn't really know who to go to. But Alan just kept talking, talking, talking. And it seemed to - you know - encourage her more to his direction. And I said to Tiffany, before I went down the driveway, "Tiffany, one day you're going to find out the truth, and I'm always going to be there for you". And that was the last time I saw them all alive.

I went home. And I didn't really know what to do. My mind was all over the place. And I knew I looked a mess and I didn't want to be seen like that, with the blood and everything on my shirt. Ian, my flat mate, was there with his children and luckily they were down in the kitchen. And I said, "I need to speak to you" and I ran into my room. And he came in and he said, "Oh my



When asked whether she reported the incident to the police to placate Ian, Christine replied:

No. It was somebody saying to me, "Well, you know what to do". Because I had so many things going on in my head, and I was fretting for the children, and I was really upset that they'd seen what had happened because that was the very, very worst that they'd ever seen. And all three of them witnessed it. Well I know Tiffany and Holly did. And I was very upset about Tiffany's friend too. Yes, the look on their faces and what Alan had said to Tiffany as I was driving away.

The next morning Christine was examined by the police doctor and photographs of the bruises were taken. The police went and spoke to Tiffany's friend who corroborated Christine's story. Her bloody shirt had Alan's blood on it. He was charged with indecent assault.

## IX. THE DEATHS

Christine stated that she had always had a worry that Alan might turn on the children.

I didn't think he would. I trusted him because I'd never seen him do it. I'd seen him come close but I thought, "No, he won't. He wants to fight for custody. He wants to be seen as equal to me as a parent". Because I'd had more involvement with them. And I didn't think he would do this. Especially to himself. You know, he had such high regard for himself. He had a big ego, full of confidence, knew he was successful. He had this striving personality to win, win, win. He never lost. He wanted always to have the upper hand. But then, like I said to Sir Ronald Davison, if he couldn't have the children, then nobody was going to. Because Alan had repeatedly made the threat about her ("If I can't have you, nobody will"), Christine had become quite fatalistic. In fact with the violence increasing with him - towards the latter part of last year and the beginning of this year [1993/1994] - I felt that I was accepting it. That it was going to be me. Something was going to happen to me. And if he had come into my work with a gun or something, I couldn't be bothered fighting it. You know, because of the children, I thought, well, I'll never be rid of him, never - not for years and years and years.

She recalled that when she first saw Alan in the funeral home:

The first thing I did was look at his face and his hands and feel that he was cold. I was adamant that he was going to sit up and get me still. Every day I went to see them - sometimes several times a day - and I went to him first to make sure he was cold. As sick as it sounds. And his hands were clenched and I knew he was tense ... yes, fighting. This is him. His fighting spirit. And that's the way he was found, fighting to the bitter end. And yet I didn't believe he was dead.

Alan Bristol left no notes explaining his actions.

They say that the children never knew what happened. It took them three minutes, maximum. The back of the car was made like a big bed. I can't understand that because the children were light sleepers. But they looked so peaceful, so ... but Alan, he obviously realised what he had done and realised the consequences and turned the ignition off. And they reckon it took him fifteen minutes, maximum. But he struggled ... and was found in a position where he'd just turned the ignition off. But it was all pretty much premeditated. Because he'd taken the hose off the pool and used that.

In response to the inevitable question of why she feels that he killed the children and himself, she answers quietly, "To get at me. It's my punishment".

I think he knew that he was going to be revealed for the person he was. And because of that he was definitely going to lose custody and he couldn't handle that. And he couldn't handle the fact that he lost, I think. It was like a win/lose thing with him. And if he lost he had to play again, double or quits.

## X. REFLECTIONS

There was very little to say once the story of the children's deaths had been told. Christine spoke with anger about Alan's lawyer's description of Alan as a devoted father, made during a press conference.

I couldn't believe it. I have it on video what he said, that Alan was a devoted father and had a good chance of getting custody of the children. And I thought, for goodness sake, you're losing sight of the fact that he murdered his children. How can he be a devoted father when he's a murderer? He put himself first. His own wants and needs over and above his own flesh and blood. Oh I don't know, I get so bitter at times.

We asked her to think about how the legal system could have worked better for her and her children. She responded by describing how worn down she had become by the constant negotiations about custody and access.

I got so tired and exhausted with it, I was bordering on giving up. I was about to give up Tiffany. I felt like it was torturing her. And I thought, well, as long as one of us bowed down and left the poor child some sanity, at the end of the day maybe she will come right. She will - sort of further down the track when she's older - understand what's gone on and that I'm still her mother. And then the words tumbled out:

I needed protection against Alan. And I wish I'd been told by my solicitor what I could and what I couldn't do, what options were open. I really didn't have a clue. What I could fight for. What rights I had. What supports there were. I just needed advice really. And what course of actions I could take.

And the attitudes. Like counsel for the children's attitude. I was very disappointed there. And I just thought, well Alan got away with a lot more, being a stronger person than me. He stood his ground. He obviously knew what guidelines he could go to. I didn't have a clue.

You know, I didn't know just how far you could fight. And just what you could ask for. Like I had no idea about this ex parte thing. And just what was involved with non- molestation orders. And what the difference was between a non- molestation and a

non- violence order. I just thought, right, he's not going to touch me again or he'll be prosecuted for it. But then there's all the other complications like the phone calls and the following around and, you know, all the intimidating stuff.

And when I came back from Whakatane, I basically felt like I'd run off with the children. I had to return them and I was getting this big slap over the hand: "Naughty girl, don't try anything else". Really that's what I felt like.

I was always on the back foot. I was constantly trying to prove myself. Alan seemed to be on this pillar and he was running sweet, and I had to prove myself.

It was only during the interview that Christine learnt that there is such a thing as an occupation order and that she might have been able to live in the family home with the children. And in response to whether a supervised access centre might have helped her situation, she replied, "Yes, I think they're brilliant because I think it's important for a child to still keep in contact with the other parent".

As a father he was good. But as a husband to me he wasn't. And I was totally disgusted that he let the children see what he did. And it was changing my point of view about him. I thought, well, what sort of a conscience has he got? What sort of a person is he really? He's obviously putting himself over and above the children. And as time went by ... would have gone by ... I think, you know, those children would have been an absolute mess if I didn't get any more protection.

My self esteem, everything, it just went through the window. But it was the children that kept me going. I didn't know how much longer I could take it. But, you know, my children were my children and I can't have any more. And I didn't want to lose them forever. I just felt like I was being cheated out of being a mother. I really wanted to stand my ground.

And killing them was a last desperate dig at me. He knew I couldn't have any more children and he knew that I adored them as much as him. So what would be the way to hurt me but to take what was most precious. But he's cheated them out of life ... out of having their own children, getting married ... just life.

## XI. THE ENQUIRY

Christine is pleased with the recommendations of the Davison Report. She believes that her children might still be alive if the changes recommended by Sir Ronald Davison had been in place. It is her hope that the recommendations will be implemented for the benefit of other children who might be saved.

On 16 September 1994, the Minister of Justice announced proposed new domestic protection legislation. This included a new protection order covering a wider range of behaviour than covered by the existing non-molestation and non-violence orders; increased penalties for breaching protection orders; and a presumption that "anyone who has been violent will not obtain custody or unsupervised access unless that person can satisfy the court that the child will be safe".[23] There was no mention in the Minister's statement about another important Davison recommendation: that the court should not make "consent" orders in cases of violence until it is satisfied that such consent was freely and willingly given.[24] Like Christine, we support the recommendations made by Sir Ronald Davison. It is our conclusion that the court dealt with the "public" Alan Bristol: the successful, rational, decent businessman. His violent and other abusive, controlling behaviour within the privacy of the home was either hidden or considered irrelevant to his fitness as a custodial parent. It is true that, under the present legislation, the court can consider spousal violence as relevant to the best interests of the child in determining custody and access arrangements, as certain recent judgements have shown.[25] However, our earlier work[26] suggests that what happened in the Bristol case exemplifies a contrasting, predominant paradigm that minimises, trivialises and makes invisible spousal violence. As Sir Ronald Davison said: The present laws and practices dealing with domestic cases where violence and abuse are not factors to be considered, seem to me to be quite adequate. In order to deal with cases involving domestic violence however, a completely new social philosophy is needed.[27]

## XII. AFTERWORD

Like Christine, we are encouraged by the recommendations of the Davison report and hope to see them fully implemented. But, in the meantime, the survivors of violence continue to do what they have always done: they carry on, they minimise their own suffering, they employ a myriad of survival tactics. As Christine told us, what had been happening to her seemed like "just everyday life":

It's like everything that I've come up against with him. It's just been an obstacle and it's like a hurdle race. You know, you jump over it and you pick up the pieces and you move on and although what has happened in February ... is the biggest hurdle, still I had this inner instinct to just pick up the pieces and move on ...

## ***Hansard Parliamentary Debates on Domestic Violence***

1994\_11\_29 1st reading DV Act  
1994\_11\_30 question Domestic Violence  
1995\_04\_30 question in house Elizabeth Tennes  
1995\_05\_30 question in house Elizabeth Tennes point scoring  
1995\_10\_10 2nd reading DV Act  
1995\_10\_11 question DV Act  
1995\_10\_12 2nd reading DV Act  
1995\_12\_11 In Committee DV Act  
1995\_12\_12 3rd reading DV Act

Hansard All on Domestic Violence

## 1994\_11\_29 1st reading DV Act

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - Hon. D A M GRAHAM*

### DOMESTIC VIOLENCE BILL

#### Introduction

Hon. D A M GRAHAM (Minister of Justice): I move, That the Domestic Violence Bill be introduced. It is intended that this Bill be referred to the Justice and Law Reform Committee for consideration.

The tragedy of domestic violence cannot be overstated. More and more people are coming to realise that not only does it hurt those who are battered and bruised, but that all society pays the price in some form or other. In the not too distant past we tended to be rather complacent about the issue, considering it not to be a significant problem in what we consider to be a civilised society.

We express shock at the old English common law rule that allowed a husband to beat his wife with a stick ``no thicker than his thumb''. Yet it is evident from the statistics that the kind of attitudes that sanctioned that law still exist in society today. For some people scenes like those in Once Were Warriors are not just something seen at the movies---that is their reality.

Strong measures are needed both to send a message that this behaviour is unacceptable in New Zealand in the 1990s and to provide greater protection when domestic violence occurs. There are two key parts to this reform. The first part replaces the Domestic Protection Act of 1982 with new legislation with a revamped regime in which victims of domestic violence can obtain a range of orders. The second part contains amendments to the Guardianship Act of 1968 that are directed at ensuring that the court deals with allegations of violence made in custody and access proceedings so that any orders it makes will not compromise the safety of the children concerned.

When the Domestic Protection Act was first enacted it broke new ground. Protection was extended to women and men living in de facto relationships. To deal with violent behaviour, a special detention power was created that provided a mandatory cooling-off period.

In recent years, as a consequence of increased public awareness of domestic violence, many suggestions have been made for changes to the 1982 Act. In October 1993 my department published a discussion paper on the 1982 Act to focus public debate on the nature of the reform. The paper included a number of options that drew on research, including the 1992 report Protection From Family Violence prepared for the Victims Task Force by Ruth Busch, Neville Robertson, and Hilary Lapsley. One hundred and ten submissions were received on the discussion paper from a wide range of individuals and groups. These included people who had personal experience of the workings of the present law, women's refuges, women's and church groups, organisations involved in counselling and programme delivery, lawyers, and Government departments and agencies.

Many were concerned about the perceived lack of effectiveness of the orders available under the 1982 Act. Amongst the key themes that emerged were the ongoing need for legislation to specifically address domestic violence; the need to reduce all forms of domestic violence in a wider range of domestic relationships; the need to provide better protection for children and young people involved in violent domestic situations; the need to empower victims by providing user-friendly and culturally appropriate remedies and court procedures; the need for counselling services for victims as well as for abusers; the need for clearer, stronger sanctions and more

effective enforcement; and the need for more publicity and education programmes to change public attitudes and those of judges and others working with the Act.

The primary objective of the new Bill is to provide greater protection for victims of domestic violence. The Bill targets violence that is usually hidden, occurring primarily in homes and between people in close relationships including---but not limited to---family members. Factors such as the often intense nature of these relationships and the proximity in which those affected live, increase the potential for stress and conflict. While close relationships, especially those within the family, attract a measure of privacy, that privacy must not be used to hide violence.

Domestic violence can take many forms not limited to physical abuse. The Bill therefore makes it clear that the term includes sexual abuse and psychological abuse such as harassment, intimidation, threats, and damage to property. Non-physical abuse can be just as harmful, vicious, and distressing as physical injuries. These ``bruises'' on the inside can result in the victim being too demoralised to be able to take steps to avoid further acts of violence. There is evidence to suggest that behaviour that does not itself involve physical abuse is often part of a pattern of behaviour that eventually escalates into actual physical violence.

While the 1982 Act recognised this to some extent, the Bill will make it plain that an incident involving physical abuse is not a prerequisite to the making of an order. The Bill calls this type of abuse ``psychological'' abuse. Some prefer to call it ``emotional'' abuse. I invite the select committee to consider what the best term is to use in this context. Whatever term is used, it should be broad in its scope and cover the deliberate infliction of all types of mental anguish.

In recognition of the diversity of the domestic relationships that now occur in society, the Bill will allow a much wider range of individuals to apply for protection orders---namely, cohabiting partners, whether heterosexual or same sex; family members; people who share a household; and people in close personal relationships. There will be provision for people to make applications on behalf of children and young people who come within any of the above classes. When other potential applicants are unable to apply themselves---for instance, because they are in hospital or are afraid to apply---another person may apply on their behalf. Orders will be more flexible than they are now. They will be able to apply against a person who has done something at the respondent's request that, if done by the respondent, would be grounds for an order.

There is to be one protection order to replace the present non-molestation and non-violence orders. The new order needs to be able to cater for those who wish to continue the relationship as well as those who do not. It will automatically protect any children of the applicant's family and may also protect other specified people such as the applicant's new partner. The protection order will have standard conditions that prohibit any type of domestic violence regardless of the kind that prompted the application.

When the parties are living apart, certain behaviour is expressly prohibited. For example, the person against whom the order is made must not watch or loiter near the protected person's residence or any other place that person frequents, follow that person about, or make contact except in certain limited circumstances. In addition, the court will be able to impose special conditions that are appropriate in the particular case. These conditions could, for instance, relate to arrangements for the transfer of a child for access.

When a protection order is made, the Bill requires that the police consider the exercise of powers under the Arms Act to seize and confiscate firearms. I invite the select committee to consider whether the Bill should go further and give the court powers relating to firearms. Positive measures to promote changes in behaviour and

attitudes are necessary if there is to be any long-term amelioration of domestic violence.

When a protection order is made there is to be a presumption that the respondent should attend counselling or a programme in an attempt to modify the respondent's future behaviour. While some judges do this now, the Bill makes it clear that this should happen as a matter of course unless there is good reason not to do so. In addition, there is provision for programmes for applicants and affected children, in recognition that they may need some support and assistance to pick up the pieces of their lives. Both these initiatives will require additional resources to ensure that appropriate services are available throughout New Zealand.

I turn now to the enforcement of protection orders. The Bill increases the penalty for breach of a protection order to a maximum of 6 months' imprisonment or a \$5,000 fine, or both. There is to be a greater penalty for persistent breaches---namely, a maximum of 2 years' imprisonment. As at present, the police may arrest without warrant when there is a suspected breach of the order. Suggestions have been made that the power of arrest should be mandatory rather than relying on the existence of a strict police policy of arrest for breaches. A statutory power to that effect, however, would be unprecedented in our criminal justice system, but again I invite the select committee to give further consideration to the issue.

The Bill tightens the bail laws so that when there is a breach---other than failure to attend counselling---there is no police bail within the first 24 hours. While the court can grant bail during that period, the paramount consideration is the safety of the victim. After that period---if the person has not been bailed by the court---the police may bail the person charged and impose conditions for the protection of the victim.

Occupation, tenancy, and ancillary orders relating to furniture will continue to be available. In addition, there will be a new furniture order that will, in certain circumstances, allow a person in whose favour a protection order has been made to remove the furniture and household effects from the property to re-establish a home elsewhere.

Court procedures are to be simplified as far as possible. The threshold for ex parte or temporary protection orders is lowered. As at present, a respondent will immediately be able to seek a variation or discharge of the order. When a temporary order is made it will, as a general rule, become final automatically after 3 months unless the respondent takes some steps in the proceedings. In that case a hearing will be held in the usual way. The Bill makes it clear that the applicant is entitled to have a support person present during a court hearing. Once a protection order becomes final, it will remain in force until the court discharges it.

Amendments are made to the civil legal aid provisions of the Legal Services Act. In domestic protection proceedings the applicant for a protection order does not have to pay a contribution nor will there be a charge on the applicant's property in respect of the costs of the proceedings.

I turn now to the second part of the reform. The Bill makes important changes to the Guardianship Act. These follow from the recommendations made by Sir Ronald Davison, who was appointed to inquire into the family court proceedings relating to Alan and Christine Bristol and to report on whether there was a need for any change in the law or in family court practice. Sir Ronald concluded that, under the law as it is, and with the current practices of the family court, the deaths of Alan Bristol and his three children were not foreseeable or preventable. However, he went on to make some recommendations for changes to the law.

The Bill therefore provides that when allegations of violence are made in custody and access proceedings the court is to determine, as soon as practicable, whether the allegations can be substantiated. In

cases when an allegation of violence against a child or a party to the proceedings is substantiated, the violent parent is not to be given custody or unsupervised access unless the parent can satisfy the court that the child will be safe.

Domestic violence is a complex and deep-rooted behavioural problem that can be eliminated only by fundamental changes in society and in attitudes towards women and children. While the changes to domestic protection law and the Guardianship Act represent a significant advance on the present law, it is important to appreciate that they are unlikely to reduce domestic violence overnight. Indeed, in the short term it may look as though domestic violence has increased, because some previously ``invisible'' violence will now be able to be the subject of orders and also police involvement.

While legislation can send important messages about the seriousness of domestic violence, there also needs to be a concerted effort on other fronts. Strategies, such as those being developed currently by the crime prevention unit of the Department of the Prime Minister and Cabinet will play an important role in developing initiatives to reduce all types of violence. Eliminating domestic violence requires changes to a culture that is unfortunately threaded with attitudes that condone violence in various contexts. This will take time and effort on the part of everyone in society but I hope that this Bill represents one large step along the way. I commend the Bill to the House.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
**DOMESTIC VIOLENCE BILL : Introduction**  
**Main speaker - Hon. PHIL GOFF**

Hon. PHIL GOFF (Roskill): The Labour Opposition supports the introduction of the Bill. I want to pick up on the Minister's last point and agree that it takes us some steps down the way, but the Opposition would want to make the point that this legislative measure by itself will not be sufficient to deal with the massive problem that domestic violence represents in our society. We support this legislation because it is consistent with the Victims Task Force report entitled Protection from Family Violence, and it is also consistent with the Davison report. A little later I will ask the Minister some questions about that, because it seems that the Bill does not go the whole way towards implementing what Sir Ronald Davison suggested in the Bristol inquiry.

I say that the legislation takes us only part way down the track because for these measures to work we have to have adequate resourcing to back them up. I am talking about adequate resourcing in terms of provision of support for the victim. We know that makes a big difference. That is why the Hamilton abuse intervention pilot programme has been successful, because the resourcing has been there for the groups to come in behind and support and encourage the victim, and ensure that the victim does not believe that the domestic violence that has been inflicted simply has to be accepted.

The resourcing is also necessary if we are to have prevention programmes that work. It is all very well to sentence people to undergo counselling and to undergo programmes, but if the Government then denies the support for those programmes to make sure they work we are deliberately jeopardising the victims of domestic violence and sentencing them to further problems. Again the evidence is there in the pilot programme in Hamilton, and the group Men For Non-Violence,

that when the resources are provided the attitude of offenders can be changed. Indeed, that has happened and the reoffending rate has been dramatically reduced.

But what we also hear from those programmes is that inadequate funding means that too often they can only at best do half a job. It is worth mentioning that for victim support we spend on average \$7.35 for each victim. I have been around victims' support groups. I know the pressure they are under. I know they are in danger of burning out. I recommend to the Minister that he visits those programmes and that he backs up these legislative measures with the sort of resources that are needed to make real inroads into the problem of violence.

The other point I draw to the Minister's attention is that domestic violence does not take place in isolation from the wider economic and social environment. Legislation to deal with violence, without regard to the socio-economic factors that contribute to its incidence, will not produce the results that the community wants. For too long the magnitude of the problems caused by domestic violence has been underestimated in this country. Too little importance has been attached to the need for measures to deal effectively with violence in the home.

It was interesting that the Roper report in 1987 revealed for the first time that 80 percent of all violence in this country is domestic violence. Recent police reports confirm that figure. Yet for a long, long time, politicians in this country, the news media, and general public attitude has been that the problem of violence is on the streets not in the home. In fact, the reverse is true because the largest part of the problem of violence in our society is found in the home. Half of all homicides take place in the home---people are killed by those whom they thought were near and dear to them.

The most insidious thing about domestic violence is that it carries over from one generation to the next. Violent homes provide negative role models. Boys in that environment learn that violence is part of the male's role. Girls accept that violence is part of a normal relationship. If we are to break that cycle of violence we need to do something effective now and we need to resource it properly to prevent that violence from occurring. What we need is a clear and unambiguous message from Parliament, from the courts, from the police, and from public attitudes that domestic violence should be treated like any other form of violence.

It disappoints me in this Bill that the Minister ignores a recommendation in the Davison report that domestic violence be accorded the same penalties that other assaults are accorded under the Crimes Act. Perhaps the Minister, when he responds to the comments of the Opposition, will explain to us why we still separate out domestic violence and accord it lower penalties than we accord to other violence by strangers.

This Bill should have been given greater priority. It is now 7 years since the Roper committee reported and made recommendations on domestic violence, which have still not been implemented. It is more than 2 years since the Victims Task Force reported and made 101 recommendations---the vast majority of which have yet to be put into place. The Davison report on the Bristol inquiry---which was very straightforward and clear---was made 8 months ago and it has taken all this time to get those reports put into legislation.

Nevertheless, I want to applaud some of the key measures of this Bill. I want to applaud the fact that it extends the range of persons who can seek protection from domestic violence, because while domestic violence was once seen in a stereotypical way---assault by a man against his wife---it ignored that there were other forms of relationship and other forms of violence and, in particular, the phenomenon of ``elder violence'' with younger people being violent towards older people in the family. Of course, we have seen this year in New Zealand the growing incidence of child homicide and assault on



I also support the fact that the categories of behaviour in respect of which protection may be sought are extended from the obvious physical and sexual violence to psychological abuse. Psychological abuse can be incredibly damaging in this area. So I welcome those things.

I welcome the formation of a single protection order replacing the non-molestation order and non-violence order. I welcome the fact that that is now more flexible in its application. I support also the extension of provisions available to the court to recommend or to order the parties, or one of the parties, to attend counselling and to make failure to attend counselling an offence.

The sanctions in this measure are increased---and that is appropriate---to a maximum fine of \$5,000 or 6 months' imprisonment. When a person repeatedly ignores the existence of a protection order the term of imprisonment can be up to 2 years. The bail provisions in this Bill are also important. It is essential that when a person breaches a protection order police bail cannot be granted for at least 24 hours. I believe that provides a very important cooling down period. I support the fact that the need to protect the victim is made the paramount consideration in the granting of police bail. There is plenty of evidence that bail given inappropriately in the past has cost human lives and has caused unnecessary damage to individuals.

I have questions to ask the Minister about the provisions relating to firearms. It is important that when a person has been guilty of domestic violence and is in possession of a firearm or a firearms licence that fact be notified to the police. Under this Bill the police have the discretion to revoke the firearms licence and to seize arms. But the adequacy of this measure will need closer scrutiny at the select committee stage.

The provisions for legal aid without the requirement to make a contribution towards it are important. So too are the enforceability of New Zealand protection orders overseas and, vice versa, overseas protection orders being enforced in New Zealand.

The Minister quite rightly said that in terms of amendment to the Guardianship Act, this Bill picks up many of the Davison recommendations. In particular, when a history of violence is proved the violent party must not be granted custody or allowed unsupervised access unless the court is satisfied that the child will be safe. But there are some things that do not appear explicitly to have been picked up from the Davison recommendations. I would like to ask the Minister what provisions are made for minimising opportunities for violence during times of access and change-over of custody, because that has been seen as a period in which the victim has been particularly prone to assault by the violent party.

I ask the Minister whether he has sufficient in this Bill to ensure that, in relation to domestic violence, the courts no longer regard the other spouse as in some way having provoked the violence. It has been a real weakness in court attitudes that the person against whom the violence is directed is often regarded as contributing to that violence. We need the message loud and clear to be that there is no excuse in any circumstances for a person to use violence against another person in a domestic or any other situation.

I repeat the point about why the penalties for domestic violence do not equate with the penalties for assault under the Crimes Act. The former Chief Justice recommended that that should be the case; it does not appear to be in this Bill. Again I ask the Minister whether he can guarantee to this House that resources will be provided to ensure that education and anger management programmes are in place to change the attitude and behaviour of the offender. If those resources are not in place then this is a lot of hot air. Those resources must be in place for this legislation to be effective. So far the track record of the Government does not give us great confidence in that

regard.

I ask the Minister why this Bill does not appear to address the concern that Sir Ronald Davison had that, when court orders were supposedly made by consent that consent was in fact freely and willingly given. Aside from those specific questions, I ask about the general approach the Government will be taking to resource adequately the preventive programmes. The support given to victims groups of \$7.35 a victim is not enough. The Minister knows those groups do need extra help because he has received correspondence from Men For Non-Violence stating they are running on a shoe-string, and that they need more assistance in that regard. He knows that the Hamilton abuse intervention pilot programme, which has been successful, is still up in the air about whether funding for it will be guaranteed. If we do not put the resources in, the problem will continue.

Will the Minister also complement this legislation with other necessary measures to deal with the problem of family stress, which is closely associated with domestic violence? The Roper report talked about the need for targeted early intervention programmes for at-risk families. The crime prevention unit has talked about exactly the same thing. All the evidence is there that interventions are most successful when they occur early in the life cycle. But are we in fact putting the resources in that area that stop the strain and tensions within family and prevent the outbreak of violence?

I am not suggesting that domestic violence is confined to just one sector of the community. Patently it is not. It is a problem that exists right across all socio-economic levels. But we know that when the family is under financial stress, such as many families are with the increase in market rents and the cut-back in benefits, then violence is more likely to be an outcome in that family. So are we to have legislation that finally picks up the recommendations of groups like the Victims Task Force in terms of legislative provisions but still then not tackle the actual causes of domestic violence in our society?

We have had a long period of time when this has been debated. We have had report after report, and the recommendations are mutually consistent, but still we insist on taking a piecemeal approach to the problems of domestic violence. I put it to the Minister that while the measures in this Bill, however belated, are welcome, this Bill will not succeed in its intentions unless he is prepared to provide the resources and complement these measures with other measures that are needed across the justice portfolio.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*

*DOMESTIC VIOLENCE BILL : Introduction*

*Main speaker - Hon. KATHERINE O'REGAN*

Hon. KATHERINE O'REGAN (Associate Minister of Women's Affairs): I am pleased to be able to speak in this introduction debate on the Domestic Violence Bill and, at long last, to see this Bill before the House. It has taken us a long time to get the Bill to where it is, but I believe that what we have before us is a good Bill. I guess there will always be other areas that we will need to address as time proceeds. One of those issues is probably stalking legislation. I hope the Minister will be able to give us some idea of exactly where that issue is in the bowels of the Department of Justice. I would hope we will be able to address that issue before too long.

I would like to begin with some of the words from Protection from Family Violence and pay tribute to the authors of the report commissioned by the Victims Task Force. They are Ruth Bush, Neville

Robertson, and Hilary Lapsley from the University of Waikato. I would like to begin with some of the words they used in their preface: ``To the women we interviewed who told their stories and who have been silenced long and enough; to the women who have been hidden and came out of hiding to tell their stories; to the women who have gone back into hiding and are there still now; to the women who have paid to tell their stories in ways they should not have to, who have paid with their bodies and their pain; to the women who still might pay when it is known they have told their stories; to the silent children listening to their mothers' stories, those children who have learnt to be silent to survive and whose stories are yet to be told; to the women who have died, '---and two died during the time they were working on this report---``the days of their deaths were marked by the system's trivialisation of the dangers you faced.' I would hope that tonight this piece of legislation will address to a major degree the concerns that the Victims Task Force report highlighted to the Government at that time.

As Associate Minister of Women's Affairs, I would like to pick out some of the major issues that address women particularly, although there is a lot in here that obviously affects both husbands and wives or partners, and children. I would like to look particularly at some of the clauses here, and congratulate the Minister on listening to the concerns expressed by the two Ministers of Women's Affairs and the Ministry of Women's Affairs, to include some of the provisions.

The particular areas that I would like to highlight are the removal of the requirement for contribution to legal-aid costs or a charge on property. A question was asked recently in the House by a member who sought that information. I was glad that we were able to tell her that we were looking at that removal.

The other issue is in clause 19: the provision for counselling or programmes for women. I believe that that in itself is a major advance for us, particularly for women. I think that clause 18, which states that the court may impose special conditions, does leave us open for opportunities to discuss particularly the issues surrounding the firearms issue, which the member who just resumed his seat spoke about.

I believe that at the present time we should perhaps look more closely at this position. As it was stated, there is no automatic removal of firearms from a house where there is a domestic problem and violence has been used. The police can revoke the licence, but we would like to see an automatic removal of firearms from that particular home or house so that the victims are much better protected, and, of course, they are both women and children in the main.

There is also an issue relating to custody and access. The task force identified that many disagreements occurred when children were being either dropped off or collected under custody and access orders. I believe that what has been done here will ensure that that matter will be resolved.

In the area of mutual orders---clause 16---where the court grants an application for a protection order, it must not also make a protection order in favour of the respondent unless the respondent has made an application for a protection order and the court has determined that application in accordance with this Act. In the past, judges have made decisions in which they impose a protection order on both partners; that they are both to keep away from each other---which I think has come to be known as the ``Two to tango'' clause---which, of course, is an automatic presumption that the fault lies particularly with the women in most instances. This was addressed by the Victims Task Force report, as well. I am glad to say that the Government has addressed that issue in clause 16.

I spoke to the New South Wales Minister for the Status of Women, and she expressed to me her hope that New Zealand would see very soon in its legislation a reciprocal agreement with regard to domestic

protection orders between Australia and New Zealand. I am very pleased to see that that, too, is within the body of this legislation.

This House and this nation cannot condone violence in any shape or form, particularly against women and children. I believe that the cost of family violence to this nation falls somewhere between \$1 billion and \$5 billion. That is a lot of money. More so, it is a lot of heartache, pain and physical suffering, and psychological suffering. I hope that this legislation will attempt to address some of those areas of the law of the past, which I believe did serve us well for the time, but which now need amending. I believe that this piece of legislation will go a long way to doing that. I hope that in the future, if it needs amending again, this House will do so.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
**DOMESTIC VIOLENCE BILL : Introduction**  
**Main speaker - ELIZABETH TENNET**

ELIZABETH TENNET (Island Bay): It is with pride and some pleasure that I see this legislation coming before the House. I want to say thank you to the Minister for finally bringing in the legislation. I also want to place on record my thanks to the Labour women members of Parliament who have also worked hard on this issue, particularly over the last year, but also to all the women out there in the groups, working away---men and women---the women who have provided evidence in matters relating to the need for changes in legislation, and to all of us who have pushed and prodded, embarrassed and lobbied the Minister to finally bring this piece of legislation into Parliament in the dead of night here on the first day of December 1994. It is here at last, and we celebrate that, but I do want to say that it is about time.

Domestic violence is indeed a very sickening phenomenon that occurs in our society. It is true that 80 percent of all violence in our community is, in fact, occurring inside our own homes. It is mainly against women and it is mainly against children. Every month of every year, a woman is murdered by her husband or her partner. Most children who are killed or abused in New Zealand are, in fact, killed or abused in their own homes. New Zealand now has the sixth-highest child-abuse rate in the world. That is not a very good statistic, and, in conjunction with the highest youth suicide rate---that issue is somewhat connected with what we are dealing with today---it is indeed a very sad case.

But I repeat, I am very pleased to see this legislation, and I am sure it will be of some good. We do not wish to see a repeat of the sorts of horrendous examples that we have seen in the past, in which domestic violence has played a part. There was the case, for example, of Catherine Coghlan, who was shot by her husband as she was leaving a counselling session in Christchurch, after which he then shot himself; and the case of the respectable Christchurch man who struck his wife with his straightened coat-hanger over a 9-hour period, and punched and kicked her head causing a perforated eardrum, because his wife did not treat him with respect. Those sorts of examples cannot be allowed to continue, and we believe that this legislation will help.

But I have to say that the Minister has been shoddy in his delay

in bringing this legislation forward. We saw in 1992 the 101 recommendations of the Victims Task Force report. We saw the report in April 1993 of the crime prevention action group report. We saw in October 1993 a discussion paper on the Domestic Protection Act, and in April this year we saw Sir Ronald Davison's inquiry into the very sad case of the Bristol murder in Wanganui, where the man killed his three daughters and then killed himself. We have seen plenty of reports over this period of time, and it is shoddy that the Minister has taken this length of time to come up with the legislation. All of those reports recommended the sorts of changes we have seen here tonight.

I support the extension of the protection order that is provided for in this Bill. It is good to see that abuse by a son against his mother, or some other family abuse, can, in fact, mean that the victim can obtain a protection order. It is good also that we are moving against elder abuse---a phenomenon that is rather hidden in our society, but which is certainly there. It is good to see that the penalties for breaching those protection orders have been increased, although I am sure there will be some debate about whether that is high enough yet.

It is good that the custody and protection orders can be dealt with at the same time, thereby recognising that domestic violence and the issuing of custody of children to a violent partner is a fatal mix, certainly well known as a result of the Bristol case in Wanganui. It is good that we are dealing with that, and it is good that a violent parent---for the protection of his or her children---will no longer be able to receive custody of those children. I found it rather curious that when a protection order is given, in this Bill there is no provision for the automatic seizure of firearms found by police in the home of a so-called violent offender. I believe the automatic confiscation of those firearms should be there. I hope that is something that can be changed in the select committee.

I support the mechanism in the Bill for compulsory counselling. It will provide one of the longer-term answers to the problems of abuse and violence in our society. But I ask the Minister how that compulsory counselling is going to be resourced when we know that the existing provisions for counselling, and other forms of victim support, are not being adequately resourced in our community. We all know that the Men Against Violence group, for example, is now seeing approximately 4,000 men a year and is helping them to stop their violence, but it is not being adequately funded. From the statistics, we know that the Men Against Violence group should be seeing approximately 10,000 men per year in New Zealand. This is based on the crimes they are committing. Yet they are not being adequately funded for the 4,000 men it is seeing now.

We saw just today an article in the Dominion that states: ``Cut threatens sex offender treatment programme''. We know that Women's Refuge has received only one increase in funding since this Government has been in power. From my Wellington experience I know that the Wellington refuge, for example, is possibly facing closure because of a lack of funding. We know also that the Young Women's Christian Association self-defence programme is not being funded by the Government when it should be. There are many areas and groups that deal with victims of violence and that try to stop violent offenders. All of those need adequate resourcing. The Minister has been very silent about how he will resource them. It is all very well to pass good legislation, but if it is not going to be funded to be able to work adequately, then we are still not dealing with the problems in our society. I hope that the next Government Budget will adequately fund the provisions that this legislation is making available. We do support the Bill. It has been a long time coming, but we are pleased to see it, and we hope that it is successful.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994***DOMESTIC VIOLENCE BILL : Introduction****Main speaker - JUDITH TIZARD**

JUDITH TIZARD (Panmure): I rise with a great deal of pleasure to greet the introduction of the Domestic Violence Bill. It has been a long time coming. What we are seeing tonight is legislation that we have waited for for too long. The funding issues will be paramount to the Opposition.

We have a choice in New Zealand. We can choose either to fund the consequences of violence or we can choose to do what we can to fund programmes that will stop violence in this country. We have to do both of those things in the meantime. But I want a commitment from this Government to recognise that the estimated 80 percent of violent acts in this country that are domestic have to be addressed seriously. We do not need the sort of attitudes that we have seen in the past in the Government, in which we have been told that domestic violence is not a serious issue.

In 1987 we had the Roper report on violence. We have had the Victims Task Force, which was set up to look into the issues of domestic violence, particularly violence against women and children. It reported in 1992. We have now waited until 1 December 1994 to see those issues being addressed.

This Bill is a vast improvement on the legislation we had before. I acknowledge all the women---all the people in New Zealand---who have played a part in getting this legislation here. I want to acknowledge the Labour women who have, since 1982, been agitating in relation to this issue. I pay particular credit to the member for Southern Maori, who has worked long and hard on this issue. She has acknowledged the problems that are facing all New Zealanders and she has acknowledged the problems that are facing Maori in particular. She has been a leader amongst us on this issue.

I pay tribute to the Leader of the Opposition. She was on the Statutes Revision Committee in 1982 and she has had a major role in making that legislation work as well as it did for 12 years. I particularly want to pay tribute to all those women in the community who, over the years, have said that this is an issue that is ``not just a domestic''. I pay tribute to the police, who have finally taken this issue seriously.

I come back to the fact that 80 percent of the violence in our community is domestic. These are people in families and in neighbourhoods who take revenge. They take out on each other their bad temper, their lack of ability to negotiate, and their lack of ability to be kind to each other. In 1993, almost every month a woman was murdered by her husband or her ex-husband. It is too many. We in the Labour Party have been asking how many more women and children must die before this Parliament gets the law right. How many women and children must die before this Parliament gives the police and the courts the power to deal with domestic violence? Women and children are paying the price. This legislation should be working for them.

I am delighted to see the extending of the range of people who can apply for a protection order to include people who are in homosexual, heterosexual, married or de facto relationships. It has been extended to family members, to people who are normally in a household, and to people with whom there is a close relationship. However, I have to ask what this Bill does about stalking. Stalking is a serious problem in our community.

Hon. Katherine O'Regan: It is probably a Crimes Act amendment.

JUDITH TIZARD: I am afraid it probably is not to do with the Crimes Act. Where there are threats to somebody who has identified the person who is threatening to attack them, that should be dealt with in terms of a relationship. It is often an imagined relationship. I have received from the member for Porirua an example of a young woman who has been stalked remorselessly for several years by the uncle of a school friend. Stalking is a serious problem in this community and I believe that it should be dealt with in this legislation.

I am delighted to see that the definition of ``domestic violence'' is widened to include physical abuse, sexual abuse, and psychological abuse such as intimidation, harassment, and damage to property. Women should not have to prove they have been attacked before they can get protection from threats. There are many women who live lives of subjection and terror. They have been threatened but they have not been subjected to violence until the crisis comes.

I am delighted to see that we will now have---rather than the technicality of whether one gets a non-molestation order or a non-violence order or a trespass order---only one protection order. I am pleased that that protection order will automatically benefit any child of the applicant's family and other people that the applicant has a domestic relationship with. It is important that protection orders can be taken out on behalf of people who are incapable of doing so themselves. For example, these could be for children or for people who have disabilities.

The counselling option provision is a very valuable one. We have to consider very carefully whether counselling is being used in some violent relationships to perpetuate the violence. That counselling should be about empowering people and not about perpetuating their subjection.

There are many other issues such as the custody issue, the bail issue, and particularly the legal aid issue, that need to be dealt with. But I come to what the Opposition is concerned about. This Bill must be given the widest airing. It must be talked about in the community. It must be known of by people who need it. They must be able to make submissions on it.

The privacy provisions that have applied in family court hearings and in family issues generally, must not be used against the victims. They must be used to protect them and only when it is absolutely necessary.

We are concerned that in the past the Government has not proved to be willing to put the funding in. We are concerned that the Government addresses not only the issues in this Bill but also the absolutely major issue of preventing violence in this community. Where are the programmes to train young people in assertion? Where are the programmes in the schools to teach young people to look after themselves? These are the ones that are being cut out in my community. Where are the self-defence courses? Where is the funding for women's refuge? Where is the funding for prevention programmes like the Hamilton abuse intervention programme to be extended through the rest of the country?

This Government has spent a lot of time telling us how wonderful Kia Marama is. It is the one model we have of changing people's behaviour. If we could have programmes of a similar type to Kia Marama for people who were starting out on a pattern of violence and abuse we might be able to save the next generation.

ROBERT ANDERSON (Kaimai): I welcome this Bill and thank the Minister for having introduced it. We have to address a problem that is caused mainly by men. I agree with the previous speaker that the Bill gives us the opportunity to ensure that this topic is widely debated in the community. Probably the greatest cause of domestic and family violence in all its forms is ignorance.

Lianne Dalziel: No, that has nothing to do with it.

ROBERT ANDERSON: Well, that is my view. I believe that the attitude of our people must change. It is up to Parliament to take the initiative and the lead by giving this issue publicity that is as wide as possible and by encouraging submissions from the community.

We have some attitudes that prevail in our country, such as domestic violence, drunk and drugged drivers, and dangerous chauvinistic driving. People of criminal intention have a lot in common. I would hope that we have statistics on this information. If not, we should set about setting up a system to acquire that information. It is important for us to know who these people are who commit family and domestic violence. We need to be able to have a character model of who they are. For instance, do we currently match up the information on people who commit this sort of violence on whether it is alcohol or drug related, whether they have an ability to read or write, or whether they have a previous criminal record? I think that to do that would lead to a better understanding of the problem and how it should be addressed.

Lianne Dalziel: It doesn't work that way, I'm sorry.

ROBERT ANDERSON: The member may have that point of view. I have a different point of view. I am taking the opportunity in the Chamber tonight of saying what I believe quite genuinely and I am making my small contribution on this matter.

I think the situation is a sad indictment on our country and mostly on the attitude of our male population. We still have a chauvinistic attitude that is far too great. I am not sure that any one person has the answer for what the cures are. But I think if we can find out who this person is, and when we have some statistical information, there may be a number of---

Lianne Dalziel: It's one's next door neighbour; it's one's uncle; it's one's brother. It's everyone. It's right across the board.

ROBERT ANDERSON: Maybe it is, but I am not sure that I am prepared to take the member's word for that because she is not producing the information. I want to ensure that there is more statistical information to get a description of this person, so that the solutions---and, if the member likes to add to it, the punishment---can fit the crime. For instance, if somebody was found guilty of domestic or family violence and had a drink problem, that person would need to be treated quite differently from somebody who had a reading and writing problem.

I feel very strongly that in its broadest terms this issue relates to ignorance, and one has to overcome that ignorance in a number of different ways. If a number of people are involved with family violence, perhaps through frustration or lack of education, we need to do something about it. It is not necessarily the answer to send people to jail but they may be required to attend some basic education programme, which may be for a 2-year period. It is like sending them back to school. I do not think that a short course of 2 weeks or 3 months is sufficient. These people need to be bound over; they need to be educated in whatever the base cause is of their frustration and the reason they commit family violence.

I would suggest to the select committee that hears this Bill and the evidence on it that it looks at the causes. If the information is



not available it should try to ensure that better statistical information is kept in the future so that we have a better idea of how to tackle this problem. This would lead to its reduction and hopefully before too long stamp it out completely.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
**DOMESTIC VIOLENCE BILL : Introduction**  
 Main speaker - LIANNE DALZIEL

LIANNE DALZIEL (Christchurch Central): I acknowledge that the speaker who has just resumed his seat has spoken with a genuine concern about the issue. However, we have had a number of reports about domestic violence. One of the problems is there seems to be a view that there is a stereotype that we can attach to domestic violence. The reality is that domestic violence cannot be attached to one particular group of people because it happens across all strata of our society. It happens in the streets of Fendalton, of Remuera, and in the streets of Linwood, of Ponsonby, or whatever, and in every place in between. There is nothing that we can draw from all the examples except that an underlying issue relates to power and control.

The power and control that men wish in a particular instance to exercise over women may be exacerbated by alcohol but is not caused by it. That message has certainly come through in all the literature that I have read. This Bill has been a very long time in coming to this House. I have followed this issue very closely since being elected to Parliament in 1990. It was not very long after that we were aware the Victims Task Force had picked this up as an issue and had decided to commission a report from a group of people in Waikato. They were Ruth Busch, Neville Robertson, and Hilary Lapsley.

I want to pay tribute to those three people in this House tonight. They put their hearts and souls into this report. I do commend it to the member who spoke before. I hope that he reads it. I commend to him that he read the original report, not the somewhat expurgated version released by the Victims Task Force on the instruction of the Department of Justice. I commend the original report to the member---all the language is there, along with all the explanations about some of the issues that are causing domestic violence in our country.

One of the problems that I have about the timing of this introduction is that we have been in urgency now for 3 days. We are only 3 weeks from Christmas. This Bill will not operate to protect those women who will find out this Christmas that home is where the hurt is. It will not protect them. It is too late for them. There will be extra people hurt this Christmas. The stresses and strains of Christmas are a particular concern. We all know that violence increases round these times. We know that people will be struggling to put the basics on the dinner table on Christmas Day---let alone something special or a little bit extra. The pressure that that puts on individual families is unbelievable. I do not think that any member in this House can fully understand the pressure that is brought to bear on families in this, the Year of the Family. As we leave the Year of the Family, we will see families torn apart.

When Ruth Busch, Neville Robertson, and Hilary Lapsley undertook their task they set out to examine continuing breaches of non-violence orders with a view to improving the protection that was offered to victims. Their terms of reference included the victims'

experiences of abuse, the response of police to reported domestic assaults, the process of applying for protection orders, and the enforcement of those orders by the police and the criminal courts. They called the report Domestic Violence and the Justice System. The name was changed to Protection from Family Violence. When they said ``domestic violence and the justice system'', they were challenging the justice system to respond to the domestic violence.

The names of the judges were omitted from the report. Details were suppressed, and information contained in the report was editorialised by the department. I shall give an example. On page 54 of the original report there is a discussion about Pam, who is seeking a protection order. It states: ``Pam went before an elderly male judge who read her affidavit and said to her: `No one can live under those circumstances. It has got to be lies.' It was only after Pam lost control, cried, and shook, which she said was a typical, helpless, female response, that he seemed to believe her.'' The original report was relating the experience of a woman standing before a family court judge. Guess how it came out in the final version! ``Pam appeared before an elderly male judge and was able eventually to convince him that her need for a non-molestation order was genuine.'' Does that give members any information about her experience? No, it does not. That was the kind of thing that happened throughout this report.

I will give another example. ``Maureen expressed great distress in having to attend further counselling and felt this was a form of harassment by her husband. She wishes to make it clear that she is extremely fearful of him and is very much opposed to any direct contact with him, or any consideration of removal of the non-molestation order that is in effect. Maureen stresses that there are no issues to be discussed with her husband and does not want to entertain any ideas of reconciliation.'' That sends a very strong message about how Maureen felt. The report was editorialised to: ``The family court judge declined to discharge the non-molestation order.'' So what happened to this report was most unfortunate in terms of the process. It certainly considerably delayed the release of the report.

I wanted to speak briefly on this Bill because I feel this is a public health issue. Domestic violence is a public health issue. Domestic violence is different from what occurs outside the home only because it is perpetrated by people whom one knows, trusts, and, so often, has loved---and still loves, in some cases. Therefore, it is a betrayal that nobody can understand except the person who is experiencing it. I feel very strongly that we as a Parliament must act very firmly on this issue. We must provide the best laws that provide the best protection to ensure that the public health of New Zealand is protected, and to ensure that women are protected from the emotional, mental, physical, and sexual violence that is perpetrated against them every single day.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - SANDRA LEE*

SANDRA LEE (Auckland Central): I shall speak briefly on this issue and endorse many of the comments made in the House this evening, particularly by the Labour Opposition women. The Alliance welcomes this Bill. I am really moved to speak in response to my colleague on the left who made the point that what is required in order to address this issue is more statistical evidence. I tell that earlier speaker

that in fact there is no shortage in this country of all the statistical information necessary to confirm clearly the reality of the situation for women. This matter has been inadequately addressed by Parliament, by Governments, by law enforcement agencies, and the like for too long.

If anybody is left in any doubt about the statistics and the degree to which abuse of women occurs in New Zealand society today they simply have to look at the number of non-molestation orders---ineffective as they have been over the years---that are issued on an annual basis. They simply need to look at the annual court records of this country to know the statistical reality of the plight of women in this country when it comes to domestic violence. What is required---and this Bill provides a key---is for society and this Parliament to send a clear message that we are no longer prepared to turn a blind eye or to take an ambivalent view towards those who perpetrate domestic violence in society.

Since I have had the privilege of becoming an MP I have had to deal with two particular cases that I honestly would not have believed would be able to occur until I witnessed them and was able to research and confirm the facts for myself. One case was of a woman who was stalked by a former husband. She had little or no support, and her life ultimately became so wretched that she took it as she felt that that was the only way left open to her. My research, the family's research, and, indeed, the police's research showed that she tried every legal avenue open to her to get on with her life and to live with her children, and it was not made possible for her. We did not protect her, and the only course she had left was to take her own life.

Another case that came before me was of a woman, a good mum, a solo mum on her own, who had removed herself from a violent situation. The court took the custody of her child from her when she refused to take her child to her former partner for his weekend visitation right, because the last time she had done that he had thrown a brick through her car window. It is interesting to note that the police failed to deal with the incident of the brick through the window, but three of them were able to go to her home and to remove the child from her. I found it hard to believe that that sort of thing occurred in New Zealand society. I rang this woman's lawyer and said: ``Am I being told all the story here?'. The reality was that it was true.

What we are effectively saying to women like the two in the cases I have just spoken of, and others that we have heard of this evening, is that it is OK when it happens to women; it is OK when it is domestic and it happens behind closed doors. If it happens in Queen Street at Christmas time, somebody is expected to deal with it; we frown upon that sort of behaviour. But if it happens to a woman in her home behind closed doors, it is all on---the OK Corral is OK with us. That is not acceptable. This legislation offers an opportunity to do something about that, and I welcome it.

I would like to address the issue of resources. The women's refuge movement, those who give rape crisis counselling in this country, and the domestic violence centres have suffered incredibly, particularly over the last few years, as a result of their resources being cut back. Alongside their resources, their national funding sources, being cut back they have also been faced with issues such as ever-increasing rate rises---in the case of the rape crisis counselling centres in Auckland---and the like. They are struggling to continue to provide their much-needed service. If we are, through this Bill, to make a commitment in terms of recognising that domestic violence is unacceptable, we also have to accept the responsibility of making a financial commitment to provide resources that will enable those organisations and agencies that have been working in this field to carry out their job and to carry it out effectively.

I would like to comment on a point that was made earlier that

there are men in this situation, too. That is true. They are by far the minority, but having said that I do think we have to be mindful that there are isolated incidents of men being the victims of violent abuse. If we tend to assume that those cases do not occur we are in danger of making it even harder for people in that circumstance to come out. In fact, in doing that we are just perpetrating the myth that has created many of the problems women have had to endure for so long in that men who are the victims of domestic abuse may not admit it because it is not macho to do so. It is OK and macho to be a perpetrator, but it is not macho and not OK to be a victim. I think we do need to recognise that there are men in that situation, but, as I say, they are by far in the minority.

Any legislation that advantages women and provides them with more protection is welcomed by the Alliance. We talk about the Year of the Family. The very first thing we should do in any Year of the Family is to make those who give the nurturing---particularly the mothers---safe.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - JILL PETTIS*

JILL PETTIS (Wanganui): I am very pleased to support the introduction of this Bill. We have waited a long, long time, and, while I am pleased that this Bill has finally been introduced, I am saddened that women and children have paid the price of the procrastination and inexcusable delay; those women and children have suffered unnecessarily. While I welcome the introduction of the Bill, I want to pause and reflect on the fact that a very large price has been paid.

First, I congratulate and sincerely acknowledge the huge contribution that has been made by the many women who have lobbied strongly for the introduction of this Bill. I commend the member for Auckland Central---I certainly endorse what she has said---and my other Labour colleagues who have also supported and worked strenuously towards the introduction of the Bill through their constant and sincere lobbying. I also acknowledge the very large and public contribution that the New Zealand Police has made in bringing the issue of domestic violence to public notice.

It is almost OK now to talk about domestic violence whereas once upon a time it was spoken about only by women in women's groups. We talked about it, but I certainly do not think it was an issue that the majority of men ever talked about openly. I sincerely commend the police for their promotion of the Not Just a Domestic programme. Next week another issue will be shown on New Zealand television screens. That will bring a lot of emotion to the fore, especially for those people who have been victims, but it is an excellent idea and I certainly support it.

Since the Not Just a Domestic programme first screened earlier in the year, there has been an increase in the reporting of domestic violence. I know that in my own area of Wanganui, where a tragic case occurred earlier this year, the reporting of domestic violence certainly has increased. The women who work at our local women's and children's shelter have said that the increase did not necessarily mean anything in particular, it was just the tip of the iceberg, and the police are most certainly treating family violence with much more conviction. This, of course, gives women confidence to report

incidents of domestic violence, and that is a good thing.

I too share the concerns that other people have expressed tonight about the issue of funding. I have been a volunteer worker for the women's refuge in Wanganui and I have gone out late at night and in the early hours of the morning when women have rung in to report that they are victims of violence, and are seeking refuge---in the truest sense of the word---from the violence they have experienced within recent hours and in many cases, of course, for months and years beforehand. It is a traumatic experience to go and assist a stranger because in many cases we do not know the women who present themselves, seeking refuge for the evening.

I want to share an instance of one night when I went out. My daughter, who would have been about 16 at the time, knew that I was going out and I wanted the family to know where I was going at that late hour. I arrived home about 3 hours later, and at that stage it was the early hours of the morning. It was a school night and my daughter was wide awake and called out ``Mum''. I went in to see her and said: ``Goodness me, you should have been asleep hours ago.'' She had been lying awake for about 3 1/2 hours, waiting for me to come home. My daughter is one of the fortunate young women in New Zealand in that she has not experienced domestic violence. I am lucky. My husband does not beat me, so my daughter has not had to experience that. But she was very emotionally upset that mum was going out to help a woman who had been severely beaten.

I mention that not to reveal anything about myself especially or because I am particularly interesting to anybody but because I want to draw attention to the effect domestic violence has on children. I welcome the widening of the definition of domestic violence in that psychological abuse is included. Many people do not recognise the effect psychological abuse has on the victim. I experienced, as I have just told the House, the effect it had on my daughter. We cannot hope to imagine the effect it has on children who live in homes where they constantly experience their mother being beaten by their father, whom they love. Children love their fathers. What must it do to them to see their father beating their mother, whom they also love? Recently we saw on television about cases in America in which the children of women who were the victims of violence had become violent themselves against their father. That is just perpetuating a vicious cycle.

My speech tonight is tinged with sadness, because as a woman I empathise considerably with those families who have been victims of domestic violence. Of course, the very public and tragic incident that occurred in the Wanganui electorate earlier this year, involving the tragic loss of three innocent young children, once again brought the incidence of domestic violence very much to the fore. We all regret that it took such a serious incident to hurry up this Bill.

Although I have spoken positively and have welcomed many of the aspects of this Bill, I have serious concerns about some issues. One of those issues is the lack of adequate resources.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - JOHN CARTER*

JOHN CARTER (Senior Government Whip): I understand that the Labour Opposition has two members who wish to speak but that there is not enough time remaining. I seek the leave of the House to allow two more speeches from the Labour Opposition, each speech to be of a duration of 7 1/2 minutes.

Mr SPEAKER: Leave is sought for that purpose. Is there any objection? There appears to be none.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - DIANNE YATES*

DIANNE YATES (Hamilton East): I am proud to speak on the introduction of the Domestic Violence Bill this evening, and I wish to thank the Minister of Justice for introducing it. I know we have given him a particularly hard time over it for a number of months. I also wish to thank my Labour women colleagues---in the spirit of the mixed-member proportional representation system it is good to have 14 colleagues in this House, and I hope we can maintain that number---because I think we are largely responsible for the background work that has gone on behind this Bill.

The Bill is about something all too common in this country, and that is the crime---and it is a crime---that is acknowledged as ``giving the wife and kids a hiding'', and that hiding often becomes a fatal hiding.

I wish at the outset to thank, firstly, the Leader of the Opposition, a Labour woman who did the initial work on the Domestic Protection Act and a lot of work in the select committee, and that was recognised by the news media at the time. We are now working on an extension, basically, of that Act, and bringing it up to date to deal with the problems we have in our society at the moment.

I also want to thank particularly three of my constituents, three people who have done a tremendous job, a very devoted job, in the groundwork for this particular Bill---that is, the three researchers from the University of Waikato. I am proud of those people and proud of that university. They wrote the 1992 Victims Task Force report---the report I have brought to this House and waved around with much pride, and I will do so again tonight because now we are actually implementing in this Bill many of their 101 recommendations.

The three researchers are Ruth Busch, Neville Robertson, and Hilary Lapsley, and I will single out Ruth Busch because not only did she do a lot of the work but she also publicised much of the material that is in that report. They saw through what was an intellectually and emotionally draining task. I know these people personally, I know how difficult the research was, and I know that they---as some of my colleagues said---put their heart and soul into it. They also put in a lot of blood, sweat, and tears. I will also say that it was this report that Sir Ronald Davison quoted almost word for word in his report.

I also wish to thank the brave women who allowed themselves to be interviewed for the report, and I particularly pay tribute to those women and children, as my colleague from Wanganui has said, who have been killed during and since the writing of that report. I apologise that I did not nag the Minister harder and longer and with more intensity that we did not have this legislation sooner than we have it now.

I wish to thank also the people who work with the Hamilton abuse intervention pilot programme. Those workers have been part of an integrated and holistic scheme that integrates community groups to deal with this problem of domestic violence. Once again, like my colleagues, I ask that we continue the resources for such organisations and that this pilot programme or similar programmes be

repeated throughout New Zealand to deal with this problem of domestic violence not afterwards but to intervene wherever possible. As the member of Parliament for Hamilton East I am proud to know these people, and I am proud to be at the introduction of what I basically consider is their Bill. They did most of the work for this.

I also wish to thank the police, as has my colleague from Wanganui. I want to thank the police in Hamilton because, once again, they have set an example and led the way, and I thank the police nationally for the changes they have already made, for the changes in their attitude, for the changes in the way they now apply present laws, and for the way they have introduced those excellent Not Just a Domestic programmes on television. I would like to say they are effective, that in Hamilton we had fewer phone calls, when their programme was shown and the 0800 number was given, than in other places because the programme existed and had been operating for some time.

I would also like to look at specifics in this Bill. I am pleased that it widens the definition of what a domestic situation is. I am pleased that it includes children to a far wider extent, and I also mention that some people are not happy with the word ``domestic'', and that, in a sense, is an offence. An assault is an assault whether it is an assault in the street, an assault in the kitchen, or an assault in the bedroom, it is still an assault and deserves the penalties for an assault, and I would like the select committee to look at the penalties that are involved in this particular Bill.

I am also pleased that non-molestation and non-violence orders become one---protection orders---and that we really do, at last, start to address and recognise the problems of the victims, to look at it from a victim's view and from a victim's fears. I hope the select committee will look at the possibility of including stalking in clause 17. I do see that there is room to include it there because the clause does talk about following, hounding, watching, and loitering. I am sure that we could include stalking in that.

I am pleased that custody for children has been addressed. I would hope that we look at a really serious problem on which a recommendation was made initially in the Bill, and that is that---in recognising the paramountcy and safety of children---we look at a safe place for what is a problem for a number of parents, which is in the access situation when children are handed from one parent to another. There should be a safe place where that can happen because it is a problem that happens almost every Friday night in New Zealand. We need to look at that problem of access and supervised access.

Once again, I would mention the problem of education and the problem of education of everyone involved in this, not only the people who are perpetrating the crime but also to remind people that the original report did have in it some problems with older men called judges, and their attitudes. It is a matter not only of education of the people who are perpetrating these particular crimes, but also of the people who are imposing the sentences and of their attitudes. I would ask people, especially the select committee, to look at the report and the original report.

I am particularly concerned, as the Minister has mentioned in introducing the Bill, about clause 33, the power to arrest for breach of a protection order, and, as he has suggested, I think the select committee should look at whether this should be mandatory. Also missing from the Bill is reference to access to information in many languages and to interpreters, and I would ask that the select committee look at this Bill being made user-friendly to all people in New Zealand and that we look at all information that is available, and that we also look at translation for those people who are victims. Often, as we have seen on television, it is people who are not English-speaking who are involved.

*Hansard - Stage: INTRODUCTION - 29 NOV 1994*  
*DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - Hon. Mrs T W M TIRIKATENE-SULLIVAN*

Hon. Mrs T W M TIRIKATENE-SULLIVAN (Southern Maori): I join with the other members of this House who have expressed delight that this Bill has finally come to this House and will now go to a select committee. I believe that, in the select committee, some aspects will be added to the Bill in order to sharpen its focus and to improve its effect. I, too, believe that the seizure of firearms not being made automatic in this legislation ought to be looked at, and also that stalking should be made an offence under clause 17, which appears to be the appropriate clause for it.

I want especially to commend those who are approved as counsellors, who include people who have not normally been officially approved in this area, yet whose expertise is unique. I speak of Aroha Terry of Hamilton, Te Whare Manaki of Napier, and Mereana Pitman, whose counselling in this area is so effective because they bring unique skills.

Yet these women and others like them, with their unique skills and effective application, have not been recognised officially as counsellors. I believe they ought to be. There is a crying need for them, and no doubt that will be an obvious effect that should follow from the implementation of this Bill. It will be enhanced in the select committee, and I will be ensuring they come before the committee to point out something of their unique expertise. If all the counselling is not effective, then it is a waste. Yet we can have people of rare expertise bringing about change---in a way shaming men who are violators, shaming them to confront in the mirror the reality of the puny aspects of their character and make a change. I have seen the work of these women. It is so important because they reach a significant section of the abusers.

I want to say, as I have said in the House before, that the first battered wives group that was ever established in this country was established for women to protect women who were battered wives. We have taken a step in this Bill. We will improve the Bill somewhat in the select committee, and thousands of women in this country will be gratified.

It is an extraordinarily sad fact, which we do not wish to acknowledge, that we have a high rate of reported domestic violence in New Zealand. I believe that for the past 20 years the extent of the reporting of domestic violence has increased because of the power of women---and the women's movement---who have sought to shine a light on these occurrences. As I said, it was over 20 years ago when we set up the first such group. It was set up in Canterbury and I want to acknowledge husband and wife Dr Church and Dr Doris Church, who worked with me and Sister Pauline O'Regan in setting that up. I think people were horrified that we established any such group, but later this country was to acknowledge that domestic violence has been occurring for decades.

The voice of women was strengthened and united from the first United Nations ``Decade for Women'', at which I led the New Zealand group, and we discussed this issue---without focusing particularly on our country. But we did introduce a concern about this matter and, because of the preparedness of women in unity to discuss these



I want to say to the Minister that I believe there is a crying need for more women to be judges in the family court. We need women who are experienced in family life. We do not have many women judges, yet it is so obviously a place for more women and for women who have had some experience in rearing a family, in living in a family, and in knowing what it is to settle problems in a family in an amicable or, at least, a civilised way.

It is hard to describe the characteristics of men who batter wives, and I am speaking of men, since the majority of people who batter wives and intimidate children are men. It is hard to pinpoint their reasons. It has been said it is a striving to exert power---to exert control. I believe it is an expression of pride in its worst sense but it is also possessiveness---a sense of possessing individuals, which, of course, is an invalid approach to any human relationship.

New Zealand happens to have one of the highest rates of offending in the Western World---in the 24 OECD countries. Without confronting the issue, we are blinding ourselves to the situation. The suggestion of statistics and a database was put forward. We have all the facts and figures, but we still have not pinpointed why it is that New Zealand men do this. Professor James Ritchie and Dr Jane Ritchie have suggested that the machismo element, which is held aloft in this country as the ideal standard for men, is one of the reasons that we venerate violence in socially acceptable situations---such as on the rugby field. I do not know. I think there are many other reasons.

I believe the home of a wife-batterer is a therapy clinic. Within the four walls of the home the batterers use battering as therapy because, generally, they are gutless people who lack any strength of character. They cannot bear to be exposed, so it happens for them within the four walls of their home. As I said, it is their therapy clinic and everyone in that home is at risk---the wife, the children; everyone is at risk. I believe, also, that we will find evidence that pornographic videos are also an inspiration to men to expect what they see to happen. But it is unreal. Since the wife cannot deliver such titillation, she is abused. Such men often abuse their daughters, and this is totally unacceptable. Thank goodness we have the Bill.

*Hansard - Stage: Stage>INTRODUCTION - Date>29 NOV 1994*  
*Title>DOMESTIC VIOLENCE BILL : Introduction*  
*Main speaker - Speaker>Hon. D A M GRAHAM*

Hon. D A M GRAHAM (Minister of Justice): In reply, I thank those who have taken part in the debate. I think there have been very useful contributions and I have taken on board some of the comments made, in particular about funding. Of course it is a matter of trying to put the resources where they are best placed. I know, for example, that only 2 years ago victim support funding was about \$330,000. It is a little over \$900,000 this year. We have the Hamilton abuse intervention pilot programme and all the other programmes. As fast as we pay for one, another one comes along. And the demand is almost

insatiable. So one has to do the best one can. The Government will certainly give that matter due consideration during the Budget round.

The other point that was made related to firearms and I think there is a lot of merit in that. Under the Bill, the making of a protection order requires the registrar to advise the district commissioner of police, who, in turn, has to advise the local police station, which is then required to check whether there is a firearms licence, decide whether they should revoke that licence, and seize the firearms. It may be that the select committee thinks that does not go quite far enough and there might need to be an automatic seizure. But, on the other hand, that does take a lot of police resources, which may or may not be necessary. However, let us see what the select committee comes up with.

The other matter related to the issue of stalking. That issue is under review. I received a report from the department about it just yesterday, and further work is being done. Of course, stalking can be done by anybody---it is not necessarily a domestic situation of any kind. It can be a total stranger, and that is why it is probably better placed in the crimes legislation, rather than in the **domestic violence** legislation. It does not matter where it is placed, as long as it is there. But the matter is quite complex and we are looking at it now. I expect another report shortly after Christmas as further work is done.

The other point that was made by the honourable member for Southern Maori was about women judges in the family court. I agree with that. I think she will find that more women judges have been appointed in the last 2 or 3 years. I think it is desirable to have a proper balance of highly qualified judicial officers in the family court, and that approach will be continued.

That is really all I wish to say at this stage. I thank members and my officials for their work on the Bill. It has taken longer than is desirable, but then so did the Bill on DNA, the Bill on sex tours of Asia, the Law Reform (Miscellaneous Provisions) Bill (No. 3), the Copyright Bill, and a number of other Bills that were dealt with just this week.

Bill introduced and read a first time, and referred to the Justice and Law Reform Committee.

## 1994\_11\_30 question Domestic Violence

*Hansard* - Stage: Stage> - Date>06 Dec 1994  
 Title>**Domestic Violence**---Police Complaints  
 Question speaker - Speaker>GEORGE HAWKINS  
 Responding speaker - Speaker2>Hon JOHN LUXTON  
 Question No - Question>7866

GEORGE HAWKINS (Manurewa) to the Minister of Police: What reports, if any, has he received on the incidence of police complaints arising from the new police policy against family violence?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: Recording of complaints arising from the attendance of police at family violence incidents commenced in April 1994 since which date complaints arising from eight incidents have been received. There is no evidence to indicate that these complaints arose from the new policy. Investigations have been completed into seven complaints, with only one being upheld.

*Hansard - Stage: Stage> - Date>06 Dec 1994*  
*Title>Domestic Violence---Investigation Practices*  
*Question speaker - Speaker>GEORGE HAWKINS*  
*Responding speaker - Speaker2>Hon JOHN LUXTON*  
*Question No - Question>7865*

GEORGE HAWKINS (Manurewa) to the Minister of Police: What is the police strategy, if any, to minimise the tendency noted by the Police Complaints Authority ``to divert onto the actions of the Police the grievances and frustrations often felt by those caught up in situations of domestic discord or violence''?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: The Police strategy consists of a policy document on family violence which provides guidelines to officer's regarding investigation practices, support for victims, the multi-agency approach, relevant law, reporting procedures and the court case disposition. In addition, officers receive training to ensure they have the necessary skills to deal with situations involving family violence. It is considered this training and the guidelines are highly successful.

*Hansard - Stage: Stage> - Date>01 Dec 1994*  
*Title>Publications---The Protection for Family Violence*  
*Question speaker - Speaker>JIM ANDERTON*  
*Responding speaker - Speaker2>Hon D A M GRAHAM*  
*Question No - Question>7742*

JIM ANDERTON (Sydenham) to the Minister of Justice: Which of the recommendations of the 1992 report on The Protection for Family Violence have been implemented?

ANSWER :

Hon D A M GRAHAM (Minister of Justice) replied: I refer to my answer to question for written answer 5319 in which I set out the current status of all the recommendations in the 1992 report. My department has put the recommendations into a series of broad categories. However, because some recommendations comprise several proposals or are framed in broad or comparative terms, their classification is approximate only. The following recommendations have been classified as 'implemented' (that is, current policy and practice are in line with the recommendation but remain subject to ongoing monitoring):

The Police: 1, 4, 9, 10, 11, 13, 15, 17.

The Family Court: 10, 14, 23, 37, 46, 47, 51, 52.

Family Court Counselling: 2, 10.

The Criminal Courts: 10.

A further 29 recommendations are addressed in substance in the **Domestic Violence** Bill which was introduced last week.

*Hansard* - Stage: Stage> - Date>30 Nov 1994  
Title>Police---Domestic Violence  
Question speaker - Speaker>GEORGE HAWKINS  
Responding speaker - Speaker2>Hon JOHN LUXTON  
Question No - Question>7650

GEORGE HAWKINS (Manurewa) to the Minister of Police: What special squads, if any, will be operating over the Christmas period to deal with family violence?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: Adequate police will be available to deal with offences and incidents, including family violence. To establish special squads at Christmas would be counterproductive and an inappropriate use of police resources.

*Hansard* - Stage: Stage> - Date>30 Nov 1994  
Title>Domestic Violence---Christmas  
Question speaker - Speaker>GEORGE HAWKINS  
Responding speaker - Speaker2>Hon JOHN LUXTON  
Question No - Question>7642

GEORGE HAWKINS (Manurewa) to the Minister of Police: What forecasts, if any, has he received of the level of family violence over the Christmas period?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: No specific forecasts have been provided as the level of family violence can fluctuate depending on which part of the Christmas period is involved. I am advised that adequate police coverage will be available to deal with offences and incidents involving family violence.

## 1995\_04\_30 question in house Elizabeth Tennet

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon PETER GRESHAM*  
*Question No - Question>2119*

ELIZABETH TENNET (Island Bay) to the Minister of Social Welfare: What is the current budgetary allocation, if any, for his department for the implementation of the Domestic Violence Bill, how is that allocation being used, if no allocation has been made, is consideration being given to allocating funds in the next financial year; if not, why not?

ANSWER :

Hon PETER GRESHAM (Minister of Social Welfare) replied: The Domestic Protection Act 1982 is administered by the Department of Justice. That Act will be replaced by the Domestic Violence Bill, once enacted. The budget allocation for the implementation of the Domestic Violence Bill will be a Vote: Justice appropriation. No specific budget allocation has been made in 1995-96 for the implementation of the Domestic Violence Bill within the Department of Social Welfare. Policy, programme, and funding issues arising from the Domestic Violence Bill are currently being examined by the Department of Justice in consultation with other Departments, including the Department of Social Welfare.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon JENNY SHIPLEY*  
*Question No - Question>2118*

ELIZABETH TENNET (Island Bay) to the Minister of Health: What is the current budgetary allocation, if any, for her ministry for the implementation of the Domestic Violence Bill, how is that allocation being used, if no allocation has been made, is consideration being given to allocating funds in the next financial year; if not, why not?

ANSWER :

Hon JENNY SHIPLEY (Minister of Health) replied: There is no current budgetary allocation within Vote: Health for the implementation of the Domestic Violence Bill.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon BRUCE CLIFFE*  
*Question No - Question>2117*

ELIZABETH TENNET (Island Bay) to the Minister for Accident Rehabilitation and Compensation Insurance: What is the current budgetary allocation, if any, for the Accident Rehabilitation and Compensation Insurance

Corporation for the implementation of the **Domestic Violence** Bill, how is that allocation being used, if no allocation has been made, is consideration being given to allocating funds in the next financial year; if not, why not?

ANSWER :

Hon BRUCE CLIFFE (Minister for Accident Rehabilitation and Compensation Insurance) replied: The Accident Rehabilitation and Compensation Insurance Act 1992 already provides compensation to survivors of **domestic violence** and sexual abuse. As the **Domestic Violence** Bill does not affect cover or the range of entitlements, no additional allocation of funds is required.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Rt Hon W F BIRCH*  
*Question No - Question>2114*

ELIZABETH TENNET (Island Bay) to the Minister of Finance:  
Has the Treasury carried out any costings on the **Domestic Violence** Bill; if so, what do the costings show; if not, why not?

ANSWER :

Rt Hon W F BIRCH (Minister of Finance) replied: Standard practice for policy proposals or introducing legislation, is that the primary policy adviser (including with respect to fiscal implications) is the department of the relevant minister; i.e., the department of the minister proposing the policy or introducing legislation. Treasury's role is to provide secondary advice in response to the relevant minister's proposal(s). The Department of Justice carried out costings on the **Domestic Violence** Bill prior to the Minister of Justice introducing the Bill to the House. Treasury did not initiate costings of the **Domestic Violence** Bill. Rather, Treasury has provided second opinion advice on the minister's proposals, including the fiscal implications.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon JENNY SHIPLEY*  
*Question No - Question>2113*

ELIZABETH TENNET (Island Bay) to the Minister of Women's Affairs: Has her ministry received any requests for advice from other Government agencies on the implementation of the **Domestic Violence** Bill; if so, which agencies sought advice, and what was the nature of the advice sought and given?

ANSWER :

Hon JENNY SHIPLEY (Minister of Women's Affairs) replied: The Ministry of Women's Affairs has recently been invited by the Department of Justice to comment on the delivery of counselling and programme services by the courts under the **Domestic Violence** Bill. The Ministry will be providing comments in due course.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon D A M GRAHAM*  
*Question No - Question>2111*

ELIZABETH TENNET (Island Bay) to the Minister of Justice:  
In light of the restructuring of his department, can he guarantee continued funding for the Domestic Violence Bill; if not, why not?

ANSWER :

Hon D A M GRAHAM (Minister of Justice) replied: The restructuring of the Department of Justice will not affect the provision of funding for the implementation of the Domestic Violence Bill. Consideration is currently being given to the allocation of additional funding for implementation of the bill to the proposed Department for Courts, as that department will be primarily responsible for operational aspects of the new Act, including funding the provision of programmes.

*Hansard - Stage: Stage> - Date>05 Apr 1995*  
*Title>Domestic Violence Bill*  
*Question speaker - Speaker>ELIZABETH TENNET*  
*Responding speaker - Speaker2>Hon D A M GRAHAM*  
*Question No - Question>2111*

ELIZABETH TENNET (Island Bay) to the Minister of Justice:  
In light of the restructuring of his department, can he guarantee continued funding for the Domestic Violence Bill; if not, why not?

ANSWER :

Hon D A M GRAHAM (Minister of Justice) replied: The restructuring of the Department of Justice will not affect the provision of funding for the implementation of the Domestic Violence Bill. Consideration is currently being given to the allocation of additional funding for implementation of the bill to the proposed Department for Courts, as that department will be primarily responsible for operational aspects of the new Act, including funding the provision of programmes.

*Hansard - Stage: Stage> - Date>15 Mar 1995*  
*Title>Domestic violence*  
*Question speaker - Speaker>GEORGE HAWKINS*  
*Responding speaker - Speaker2>Hon JOHN LUXTON*  
*Question No - Question>1222*

GEORGE HAWKINS (Manurewa) to the Minister of Police: What proportion of the 44 580 violent offences reported in 1994 do police estimate were family-related, and what was the proportion in 1993?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: In 1986 the Roper report indicated that up to 80 percent of violence was family related. In the past there has been no clear definition of family violence, but police are now endeavouring to gather data. At this stage the programme is not sufficiently advanced, or the data

*Hansard* - Stage: Stage> - Date>15 Mar 1995  
Title>Police districts---Domestic violence  
Question speaker - Speaker>GEORGE HAWKINS  
Responding speaker - Speaker2>Hon JOHN LUXTON  
Question No - Question>1221

GEORGE HAWKINS (Manurewa) to the Minister of Police: For each police district, how many domestic disputes did police attend in each of 1993 and 1994, and in what proportion of cases were charges laid?

ANSWER :

Hon JOHN LUXTON (Minister of Police) replied: The total domestic disputes attended in 1993 and 1994, not resulting in charges being laid, are set out in the schedule that follows. Domestic disputes resulting in charges are recorded as offences. These are not subdivided according to the relationship between the offenders and victims, unless this is an essential element of the offence.

District	1993	1994
Northland .. .. .	579	456
North Shore .. .. .	728	610
Auckland Services .. .. .	8	3
Waitakere .. .. .	952	749
Auckland City .. .. .	2 470	2 427
Manukau .. .. .	1 859	1 566
Papakura .. .. .	1 070	1 030
Hamilton .. .. .	792	517
Te Awamutu .. .. .	419	275
Tokoroa .. .. .	409	336
Tauranga .. .. .	642	565
Rotorua .. .. .	543	524
Gisborne .. .. .	466	363
Napier .. .. .	359	168
Hastings .. .. .	421	424
Taranaki .. .. .	617	410
Wanganui .. .. .	696	492
Palmerston North .. .. .	1 092	649
Kapiti-Mana .. .. .	706	598
Hutt .. .. .	1 451	1 224
Wellington .. .. .	789	686
Nelson .. .. .	652	396
Christchurch .. .. .	1 400	1 279
Canterbury Rural .. .. .	191	162
South Canterbury .. .. .	316	143
West Coast .. .. .	185	126
Dunedin .. .. .	417	207
Otago .. .. .	252	197
Southland .. .. .	527	374
Total .. .. .	21 008	16 956



## 1995\_05\_30 question in house Elizabeth Tennet point scoring

1995\_05\_30

*Hansard* - Stage: Stage>QUESTIONS ON NOTICE - Date>30 MAY 1995

Title>Domestic Violence---Budget

Main speaker - Speaker>ELIZABETH TENNET

Responding speaker - Speaker2>Hon. JENNY SHIPLEY

Question No - Question>7

### Domestic Violence---Budget

7. ELIZABETH TENNET (Island Bay) to the Minister of Women's Affairs: Will the Budget address the problem of domestic violence and other violence against women and children; if so, how?

Hon. JENNY SHIPLEY (Minister of Women's Affairs): Far be it from me to steal the thunder of the Minister of Finance on Budget night.

Elizabeth Tennet: Given that the Wellington Rape Crisis centre and other Wellington sex abuse support agencies are broke and are working with unpaid labour after Government cuts to their funding, how can women feel any confidence in the Government's commitment to them or their protection?

Hon. JENNY SHIPLEY: I am sure that if the member checks the amount of money that Rape Crisis and Women's Refuge have received since this Government came to office, she will see there has been a steady set of increases in support available for those services.

Chris Fletcher: What initiatives has this Government taken to address the issue of domestic violence?

Hon. JENNY SHIPLEY: I am sure members will recall that on 1 December last year the Government introduced the Domestic Violence Bill. The objective of the Bill is to provide much greater protection for victims of domestic violence, including women and children, and to ensure the protection of people in a wide range of domestic and personal relationships. The Bill is currently before the Justice and Law Reform Committee and will come back to this House in due course.

Elizabeth Tennet: I seek leave to table a letter from the Wellington Sexual Abuse Help Foundation, which states that unless \$50,000 can be found by the end of July that foundation, too, will be slowing down and shutting down its services.

## 1995\_10\_10 2nd reading DV Act

*Hansard - Stage: Stage>SECOND READING - Date>12 OCT 1995*  
*Title>DOMESTIC VIOLENCE BILL : Second Reading*  
*Main speaker - Speaker>Hon. D A M GRAHAM*

### DOMESTIC VIOLENCE BILL

#### Second Reading

Hon. D A M GRAHAM (Minister of Justice): I move, That this Bill be now read a second time. Domestic violence is a significant problem in New Zealand. It permeates through all parts of society. Everyone feels its impact, directly or indirectly. This Bill aims to even up the odds for those directly affected, by providing greater protection for the victims of domestic violence. It also sends yet another signal that domestic violence is unacceptable behaviour in the 1990s.

This Bill will repeal the Domestic Protection Act 1982---a statute that is not very old in legislative terms. Since 1982 society's attitude towards domestic or family violence has been changing. Each year the level of tolerance diminishes. These changing attitudes parallel international developments.

Traditionally, domestic violence has been ignored or condoned, primarily because it occurred between people in close relationships, and usually in the privacy of their homes. Violence, which if it had occurred between strangers would have caused public outrage, went unreported because it involved family members. The relationship and the accommodation situation were often the factors that prevented the victim from just getting up and leaving, or telling the abuser to leave. In these circumstances the general criminal law does not provide the kind of protection needed. A more focused legislative response was required for victims to feel safe.

I am pleased that the Bill has emerged from the select committee with amendments that improve and strengthen it. The Bill has taken the non-molestation and non-violence orders from the 1982 Act, and has combined them into a single protection order that can last indefinitely. The order is available for a much wider range of people in close relationships, not only the nuclear family. The Bill allows children to apply for orders in their own right. It allows people around the protected person, who may not have a relationship with the respondent, to come under the umbrella of the order if that is appropriate. Similarly, orders can apply against a person whom the respondent has encouraged to do something that would be grounds for an order if the respondent had done it himself.

The Bill gives greater recognition to the features and dynamics of domestic violence as they are now understood. Clause 3 recognises expressly that domestic violence includes psychological abuse. One form of such abuse is allowing a child to witness the abuse of a person with whom that child has a domestic relationship. The amendment to this clause makes it clear that the child does not need to see an incident. If the child hears it taking place, that also constitutes psychological abuse.

The select committee has made a series of amendments to different clauses to change the focus from single acts to behaviour generally. In particular, clause 3 recognises that while a single act may constitute abuse, the abusive nature of particular behaviour may arise from the fact that there is a pattern of behaviour comprising a series of incidents, some or all of which appear to an outsider to be relatively innocuous. To the victim, the latest and perhaps minor act may simply be the last straw. In other words, the court has to look at the behaviour as a whole, in the context of the particular relationship.

A protection order automatically contains two types of standard conditions, which are found in clause 17. The first group prohibits all forms of **domestic violence**, regardless of the form that led to the application. The second group, which can broadly be described as non-contact conditions, is based on the conditions that are currently part of the non-molestation order. The select committee has simplified the formulation of some of those conditions.

As the Bill allows the new protection order to operate while the parties are living in the same house, it is necessary to state what happens to the non-contact conditions in those circumstances. The relevant clauses have been amended to provide that the non-contact conditions can be suspended or revived only if the protected person consents. This means that the protected person is in control of the situation, and if police officers arrived at an incident they would assess the current status of these conditions by reference to the protected person only.

Where an order also protects children, the court can specify in the order who is to give this consent. Where there is more than one protected person in the house, all must consent to the respondent's presence. It will be important for respondents to understand the implications of these provisions. If a respondent considers that the protected person is misusing them, the respondent has the option of applying for a discharge of the order.

Clause 18 allows customisation of orders by providing for special conditions that are necessary to protect the applicant. The select committee has added a new category of special conditions relating to weapons, which are defined as including ammunition and explosives as well as firearms. The committee was satisfied that there was insufficient evidence to warrant this type of condition being a standard condition that applies automatically to every protection order. Instead, it decided that weapon conditions should be available on request for applicants who thought they were necessary for their protection. To ensure that the issue is actively considered in each case, every application must state whether the applicant wishes to apply for a special condition relating to weapons.

The effect of a weapons condition is that the respondent cannot possess or have under his or her control any weapon. The respondent cannot hold a firearms licence. If the protection order is a temporary order, as will often be the case, the licence will be suspended until the order becomes final, and the respondent must surrender any weapon or licence to the police within 24 hours, or whenever the police demand it.

Clause 18C gives the court discretion to allow possession of a specified weapon or licence in limited circumstances, if the effect of the condition would otherwise be to deprive a respondent of his or her livelihood. In that case the conditions can be relaxed, but must still ensure to the greatest possible extent that the protected person will be safe. Even if the court relaxes the condition in these circumstances, the police are not obliged to grant a licence under the Arms Act.

The provisions in the Bill as introduced requiring copies of all protection orders to be sent to the police have been retained. The police must check each order, and can use the Arms Act powers to revoke a licence or seize weapons, even when the order does not

contain a weapons condition.

The Bill places considerable emphasis on programmes for both respondents and victims. The term ``programme'' has now been adopted in preference to ``counselling'', as it more accurately describes the kind of assistance to be offered under the Bill. The objectives of the programmes have been refined in recognition that the Bill cannot hope to provide programmes that deal with all aspects of victims' lives that are affected by the violence, or all problems that respondents may have. For adult victims the main objective is to promote protection from **domestic violence**, and for child victims it is to assist in dealing with the effects of such violence.

Clause 19 makes it clearer that a protected person who wishes to attend a programme is entitled to do so, and simply makes a request to a registrar. The parties cannot be required to attend joint sessions, although they can agree to do so. At the end of the programme the provider must make a report on attendance and on participation.

Clause 26, which relates to confidentiality of information disclosed to a programme provider, has been revised. While restrictions on disclosure remain, breach is no longer an offence. The clause also contains a list of exceptions to the general rule preventing disclosure. A provider may disclose information for the purposes of proceedings under the Act; for the investigation of offences committed during the programme; where it is necessary to prevent or lessen a serious threat to the safety of the public or of a particular person; where consent is forthcoming; or to those who are providing programmes to other people to whom a particular protection order relates.

I was pleased to announce at the time of the Budget that the Government has provided \$9 million over the next 3 years to implement the initiatives in the Bill. A good portion of that money will go towards providing the programmes. As it has proved difficult to estimate the likely increase in costs, Cabinet has agreed that once there is more concrete data about actual costs, I will be able to assist with additional funding if necessary.

The Bill also toughens the enforcement provisions by tightening the bail laws and by making a breach of a protection order punishable by a maximum of 6 months' imprisonment. For further breaches within a specified time, the penalty is a maximum of 2 years' imprisonment.

The committee considered carefully whether the discretionary arrest power in clause 33 should be replaced by a stricter, even mandatory, arrest power, as some submissions suggested. Because the Bill expressly covers a much broader range of conduct, and a wider group of people than does the present Act, it appeared too harsh to have a rigid arrest power, the consequences of which are probable detention for 24 hours. The committee concluded that the current discretion, combined with some statutory guidelines about the exercise of the discretion and a strict police policy, strike the appropriate balance.

Part III provides for four types of property orders, including a new furniture order that allows furniture to be uplifted if that is necessary to set up a new home, rather than the victim getting possession of the existing home. There were concerns that restricting the two types of furniture orders to applicants who had children penalised single people who might have as much need for such an order. Clauses 48 and 52 therefore loosen this provision to allow these orders to be made when the partners have been living in the same house, whether or not children are involved.

Part VA includes a raft of new provisions for public registers that allow a protected person to apply for a direction that information about the person's whereabouts that is on a public register should not be made available to the public. The aim of these provisions is to assist and protect a person who wishes to re-establish his or her life in a new place.

Clause 105 makes important changes to the custody and access provisions of the Guardianship Act. These changes implement the recommendations of the Davison report, which followed the deaths of the three Bristol children last year. Where allegations of violence are made in custody and access proceedings, the court is to determine as soon as practicable whether the allegations can be sustained. If an allegation of violence against a child or a party to the proceedings is substantiated, the violent parent is not to be given custody or unsupervised access unless that parent can satisfy the court that the child will be safe.

Access change-over times can create the opportunity for conflict or violence between parents. To provide greater protection in these circumstances, a new provision will be inserted in the Guardianship Act. This will require the court, when making an access order in cases where there have been allegations of violence, to consider whether there are adequate safeguards to ensure the safety of the non-violent parent during access change-over times.

A number of submissions raised the issue of funding of supervised access. The Bill provides that where a person who has used violence is permitted to have supervised access to a child, the costs incurred in exercising supervised access are to be met by that person. No change has been made to this provision. However, the position will be kept under review, and if after the new provisions have been operating for a while it appears that the lack of funding for supervised access is causing real difficulties, the issue can be re-examined at that stage.

Clause 109 amends the Legal Services Act to create a special scheme for victims of **domestic violence** who receive legal aid. They do not have to pay contributions, nor does any charge attach to their property. The amendments make it clear that this special legal aid scheme applies only to proceedings under the **Domestic Violence** Act. It does not apply to other proceedings like custody and access that may happen to be taken by the person at the time.

Finally, I mention that although there is no specific commencement date for the Bill, it is the Government's intention that it should come into force as soon as the necessary rules and regulations can be made.

**Domestic violence** is everyone's problem. While there is now less tolerance of **domestic violence**, what is required is a fundamental shift in attitudes throughout society. That requires initiatives and a variety of funds, and it will take time. The passage of this Bill will represent a significant step forward, but its initiatives are unlikely to reduce **domestic violence** overnight, and in the short term the problem may appear worse, as some previously invisible violence surfaces. However, I hope that before too long, as a result of this and other initiatives, it will be possible to point to some measurable reduction in the incidence of **domestic violence**, and that must benefit all society.

I thank the select committee for its good work. I commend the Bill to the House.

*Hansard - Stage: SECOND READING - 12 OCT 1995*  
*DOMESTIC VIOLENCE BILL : Second Reading*  
*Main speaker - Hon. PHIL GOFF*

Hon. PHIL GOFF (Roskill): The objective of this legislation is to provide greater protection for the victims of domestic violence. As such, the Labour Party endorses this legislation very strongly. The select committee looked very closely at the legislation. It was very demanding on its officials, and it finally came back to the House with 42 pages of amendments. I believe that the changes that were made through the select committee have produced the best possible legislative response to a problem that has devastated the lives of literally hundreds of families. We believe that the legislation is a good effort towards putting in place what is required in statutory terms.

I take a moment to congratulate the departmental people, who served the committee well, who did extraordinarily good research on the Bill before it was introduced, and who, at every point of the Bill, dealt with it in a competent and efficient way. I think all the select committee members would endorse those comments.

I give credit to many of the people who did the research and the reports and who pushed and lobbied on the need for this legislation long before it developed any statutory form. While it is difficult to distinguish only one group out of very many that have worked in this area, I pay particular tribute to the people at University of Waikato, Ruth Busch, Neville Robertson, and Hilary Lapsley, who played a major role through their 1992 report for the Victims Task Force entitled Protection from Family Violence. I think in many senses that report was a critical genesis of the legislation that we have before us.

But even before this task force reported in 1992, we had the commission of inquiry headed by Sir Clinton Roper way back in 1987. That commission of inquiry told the country that contrary to the view that violence was something that happened to you on a late Friday or Saturday night in a dark alley somewhere in the centre of the city, 80 percent of all violence in our society was in fact domestic violence. The delay in following up the Roper report with legislation to address the problem is an unfortunate reflection on the low political priority that, for too long, was accorded to legislating in this area.

Eighteen months ago we received another report, the Bristol inquiry by Sir Ronald Davison. The Bristol inquiry followed the murder of three young children in the Bristol family by their father, who committed suicide, when, despite the fact that this man had on many occasions used violence against his spouse, he was given custody of children in a circumstance that was quite inappropriate and led to a terrible tragedy.

As a result of the Davison committee report we have in this legislation changed the Guardianship Act so that violence by any person creates a presumption that that person who is violent will not have custody and will not have unsupervised access to his or her children unless that person can prove to the court's satisfaction that the children would be safe in his or her care.

There is no doubt at all that this legislation is long overdue. The prevalence of domestic violence in this country and overseas was recently exposed in a report by Hilary Lapsley in 1993 for the Social Policy Agency. Regrettably, too little work has been done in New Zealand, so the report relied to some extent on far greater research that has been done in the context largely of the United States. There it was estimated that the number of women abused by partners ranged

from 18 to 36 percent of the female population. Between 7 and 11 percent of the women had been severely abused by their partners at some time in their lives. In New Zealand a study found that abuse in this country, though lower than the United States estimates, was still very significant. The study found that 16 percent of women at some stage had been physically abused as adults. Another New Zealand study found that 9 percent of women had reported assaults by partners over a period of 5 years.

But the assault by male on female is only one aspect of the area where protection is needed from domestic violence. Another area where the need is becoming exposed is in the area of elder abuse. In that context in the United States it is estimated that there are some half a million to 2 1/2 million incidents a year. Regrettably in New Zealand no such study has been done of the violence perpetrated on elderly people by those on whom they are dependent. But if we extrapolated the American figures we are probably talking about 20,000 cases a year.

The third form of domestic violence that is also prevalent is sexual abuse. North American and English studies show that between 12 percent and 38 percent of women were sexually abused as children. A recent New Zealand study puts the figure for this country at 24 percent, nearly one in four. Even if only a fraction of that level of sexual abuse was occurring, this situation is extremely serious. So the need for the protection of women and children, in particular, and also of elderly people, in a domestic situation is very clear.

The need is all the more imperative when we take into account the fact that study after study shows that violence in the home is intergenerational. Violent fathers and battered mothers are role models for their sons and daughters and the problem carries over from one generation into the next.

The human cost, obviously, is the most important, but there is a financial cost and that financial cost needs to be taken into account when we consider the very low level of resourcing that the Minister has just foreshadowed will be available to implement this legislation. Suzanne Snively last year did a study for the Department of Social Welfare. She said that at the very conservative end of estimates, family violence in this country is costing the country at least \$1.2 billion a year. Clearly this legislation is needed to confront a problem that these statistics demonstrate is one of the most serious social ills of our society at the present time.

The point that the Opposition wants to make in the House this afternoon is that legislation on the statute book is not enough. It is essential that institutions and programmes established or given responsibility under this legislation are also given the financial ability, the resources, to do the job properly to meet the demands that this legislation will place upon them.

As I said before, the Minister suggested to the House a short time ago that he has received from Cabinet a sum of \$9 million, which will cover the first 3 years of the implementation of this programme. I am sure the Minister himself is aware that this is only a fraction of what the actual costs will be to do the job properly. Principal Family Court Judge, Judge Mahony, appeared before the select committee, and he estimated that the number of domestic violence cases currently coming before the courts, as a result of this legislation, will nearly double. Currently about 5,000 cases a year of family violence are heard before the courts. His estimate is that this will increase to over 9,000. That will create a considerable extra work burden on the courts at a time when they are already under some pressure.

A very good part of this Bill ensures that legal aid is available to those needing protection orders, without any cost having to be borne by the person seeking that protection. I applaud that. It will have a cost. That cost alone is estimated at between \$1.5 to \$2 million dollars a year. Changes in the Guardianship Act are estimated

to cost \$4 million. The requirement under the Act, and again I support this requirement, is that offenders are required to attend compulsorily programmes addressing their behavioural problems, and that will also cost at least \$4 million a year. When we take into account the cost of providing additional support for victims, and God knows that is necessary, that too is an extra cost.

A very conservative estimate of what is required to put this legislation into effect is \$10 million a year, yet the Minister is offering \$9 million over 3 years. I know he has said there is some flexibility---he can go back to Cabinet for some more money---but I must ask the question of why so little has been given at this point. Are we going to see a Government determined to try to implement good legislation on the cheap, in a way that will undermine the effectiveness of that legislation? We have already seen the groups working out there now expected to make huge efforts on the cheap---Victim Support, Women's Refuge, Men for Non Violence New Zealand. They are not receiving the funding that is necessary for them to give the protection to victims that the victims need.

I am concerned that this approach is being taken in this legislation. It is imperative that the Government does provide the funding necessary. I mentioned the Snively figure---that domestic violence is costing this country \$1.2 billion a year---and the Government is talking about an average of \$3 million to address that problem. I do not believe that that will be enough, and I predict quite confidently that the Government will have to come back for more money for these programmes or alternatively it will try to do it on the cheap with disastrous consequences. The proper funding of the implementation of this legislation is only one of the co-requisites for the success of the legislation in meeting its objectives.

More than any legislative change, we need to take other measures if we are to provide real protection for victims in our society. A fence at the top of the cliff is always preferable to the need for an ambulance at the bottom, and, first and foremost, I think that what we have to do is try to prevent people from becoming victims in the first place. The objective of this legislation is to assist victims of domestic violence, and to help prevent that we need to have programmes alongside the statute book to ensure that this happens.

Disproportionate violence, we know, occurs in those families that are dysfunctional. We need to intervene early to identify such families, as they do in Hawaii; to screen children born in hospitals; and to check whether the family is dysfunctional. Where the family is dysfunctional we need from the time of birth to offer support programmes to ensure that those children get a good start in life and are not subject to domestic violence. Home visitors under the Healthy Start programme that operates in Hawaii work incredibly well. They have cut down child abuse and child neglect. They are trying to break the intergenerational cycle of domestic violence.

Surely we must do the same thing here. The legislation by itself will not achieve the objectives set down in statute. We need programmes aimed at addressing problems in violent behaviour at a young age. There are very good programmes like Eliminating Violence---Managing Anger, which operates in a few schools. It is incredibly successful but there is no funding to spread it beyond just a handful of schools to address the problems of violence in children throughout the wider community.

We need access to programmes aimed at dealing with the causes of violence or abusive behaviour, again by adequately resourcing those programmes. We have the excellent Stop programme, which is designed to deal with problems of sexual abuse. It works. It is cost-effective. It helps prevent sexual abuse by offenders from continuing over the lifetime of that offender. But we have large areas of the country that have no coverage by such programmes. In some areas those programmes have closed through lack of funding and in others where they operate they are underfunded and they cannot



meet the demands that are placed upon them.

I believe that the Government has to be consistent with the objective of this legislation by giving greater protection to victims, and by providing the support and the resources to proven and cost-effective programmes that deal with the causes of violent and sexual offending, most of which occurs within the home.

What does this Bill do? It brings into effect some very important changes. It extends the range of people who can now seek protection from domestic violence, to all forms of domestic relationships. It broadens the category of behaviour covered---not simply physical assault but also sexual and psychological abuse. It increases sanctions for those who break protection orders. Those fines are now up to \$5,000 or 6 months' imprisonment. I think the figure was \$500 and 3 months' imprisonment. Importantly, it puts a much more severe sanction in place for the person who breaks an order three times. In the committee we changed that to the breach of protection orders protecting any person, so that those who break such orders in such a way, who are recidivist in their behaviour, can be imprisoned for up to 2 years.

Offenders will be referred to programmes to seek to change their behaviour. It is no good for offenders appearing before court to be placed back in the family home and back in the community, unless we start to address the causes of their behaviour. Offenders will have to attend programmes, and what we tried to do in the select committee was to ensure that the law was not met simply by attendance but that an effort was made by those persons. I do not want to exaggerate the effectiveness of the programme but figures suggest that at least in half of the cases people are far less likely to reoffend, and that justifies the investment that we make in the Bill in this way. I think that the effect of this Bill will be to send a clear message that violence as a means to resolve domestic disputes simply will not be tolerated by society.

There are one or two issues on which I can touch in the last minutes of my speech. We looked at the question of the fact that this Bill did not cover minors---people under the age of 17 years---who behaved violently towards their parents. This was a matter of concern to some of us on the committee who were familiar, through constituency work, with violent and abusive 14, 15, or 16-year-old boys much larger than, usually, their single mothers, and we regretted that the protection under this Act would not be provided in those situations. We were, however, assured that the Children, Young Persons, and Their Families Act makes provision for this and allows for the removal of violent children, but I believe that we will need to monitor that.

There was the question of power to arrest for the breach of a protection order. The police, of course, can arrest without warrant where there is good cause to suspect that an order has been breached. The committee decided that the power of arrest would be left as a discretionary exercise of that power rather than as a mandatory exercise by the police. The police very much supported the flexibility that was provided by discretion. The current police policy is that a person who breaches an order is to be arrested unless there are exceptional circumstances. Looking at the statistics, it can be seen that the police policy is having an impact. In 1991, the number of prosecutions was 2,427, then 3 years later in 1994 they had nearly trebled to 6,684.

It was drawn to our attention by submissions that there were inconsistencies in the implementation of police policy. We believed that that needed to be dealt with administratively rather than on a statutory basis. We believed that flexibility was important; the more so because of the wider scope of the new Act and the broader range of conduct that will be captured, some of which is not intrinsically criminal. The consequence for a breach of something that may be technical or comparatively minor is probable detention for 24 hours,

Clause 34 refers to the release of a person arrested, and the Bill does make a significant change to general bail laws. The effect will be that except in cases of breaches of direction to undergo a programme, a person charged with the breach of a protection order cannot be released on police bail for 24 hours. Indeed, the court decision on the bail will also take into account as a paramount consideration the safety of the victim.

## 1995\_10\_11 question DV Act

*19951011 question*

*Hansard - Stage: Stage> - Date>11 Oct 1995  
Title>Written Question  
Question speaker - Speaker>DIANNE YATES  
Responding speaker - Speaker2>Hon D A M GRAHAM  
Question No - Question>7431*

DIANNE YATES (Hamilton East) to the Minister of Justice:  
Which of the 101 recommendations in the 1992 Victim's Task Force Report does he consider are current policy or in practice, are to be addressed by proposed legislation, are still to be considered, are not regarded as practicable, are based on misconceptions, relate to other departments, and are recommendations he does not intend to endorse?

ANSWER :

Hon D A M GRAHAM (Minister of Justice) replied: By ``the 1992 Victims Task Force Report'' I assume is meant the report commissioned by the Victims Task Force Protection from Family Violence: a study of protection orders under the Domestic Protection Act 1982 (abridged). I refer to my answer to question for written answer No. 5319, lodged on 14 September 1994. Since this answer was given two recommendations may have changed status. Recommendations on the Family Court, numbers 31 and 8, may be able to be addressed further in the course of the implementation of the **Domestic Violence** Bill. Any further work on these recommendations will need to wait until the final form of the **Domestic Violence** Bill is known.

## 1995\_10\_12 2nd reading DV Act

*Hansard - Stage: Stage>REPORT OF SELECT COMMITTEE - Date>10 OCT 1995  
Title>DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee  
Main speaker - Speaker>ALEC NEILL*

### DOMESTIC VIOLENCE BILL

Report of Justice and Law Reform Committee

ALEC NEILL (Chairman of the Justice and Law Reform Committee): I am directed to present a report. I move, That the report of the Justice and Law Reform Committee on the Domestic Violence Bill do lie upon the table. The Domestic Violence Bill was introduced to this House and referred to the Justice and Law Reform Committee on 29 November 1994. The Bill consolidates and amends the Domestic Protection Act, which is consequently repealed.

The Bill is one aspect of the Government's overall strategy on the prevention of domestic violence that has been developed by the crime prevention unit of the Department of the Prime Minister and Cabinet.

In reference to the conduct of the select committee during its examination of the Bill, the closing date for submissions occurred on 24 February 1995. The committee received 67 submissions from women's groups, refuges, counsellors, researchers, victims, and other interested groups and individuals. Thirty-three submissions were heard orally. The committee travelled to Hamilton to hear submissions; it spent 14 1/2 hours on the hearing of evidence, and 18 1/2 hours in consideration.

I raise a point of order, Mr Speaker. Is there any chance of this being heard in some degree of quietness rather than members of the Opposition making large amounts of noise?

Mr SPEAKER: I am trying to hear the member. Perhaps members would be silent. If they wish to speak they should go outside.

ALEC NEILL: Thank you, Mr Speaker. The committee received advice from the Ministry of Women's Affairs, the Police, the Department of Justice, and the Ministry of Justice; and it received drafting assistance from parliamentary counsel. I extend to those departments and to parliamentary counsel the committee's thanks for their extensive involvement in this legislation.

The Justice and Law Reform Committee has completed its consideration of the Domestic Violence Bill and recommends that it be allowed to proceed, but at the same time it has drawn a number of amendments to the attention of the House, which are included in the report back.

One of the major issues considered by the select committee was that of the provision relating to weapons. The committee was informed by police that very few domestic-related homicides are carried out by licensed firearm owners. While up to one-third of partnership homicides involve firearms, the majority are carried out by people without firearms licences, using stolen weapons. However, a significant number of submissions called for stronger preventive measures in relation to firearms. Therefore the committee recommends the insertion of a number of new provisions relating to weapons. These amendments provide that the court may require that a respondent must not hold a firearms licence or possess or control weapons; that the court may allow special conditions where respondents would otherwise be deprived of their livelihood; and that where a firearm licence is suspended under a temporary protection order and the order becomes final, then the licence is revoked. The amendments also provide for the retention, return, or disposal of surrendered weapons and licences.

The Bill provides that upon the making of a protection order, a copy of that order must be forwarded to the police station nearest to

where the protected person resides. The police must immediately---and I emphasise the emergency nature and urgency of the issue---ascertain whether the person against whom the order has been made holds a firearms licence and consider whether to revoke that licence and seize any firearms from that person.

The committee recommends that these clauses be amended to take account of future technology with regard to the sending of copies of orders to the police. The proposed amendment also provides that where an order is made with special conditions relating to weapons, the police must be informed of where and when the order was served. The committee recommends that where a foreign protection order is sent to the police, the provision relating to the revocation of a firearms licence and the seizure of firearms applies.

The committee gave consideration to the counselling provisions contained in the Bill. Clause 19 provides that where a protection order has been made, the court may direct that the applicant, the applicant's child, or another specified person attend a counselling programme upon the request of the applicant. The committee recommends that the Bill be amended to remove the mandatory element of the court directive for counselling for protected persons. This change will provide for a registrar to authorise counselling at the request of the applicant. The applicant must be informed of the right to request counselling and may make the request at any time while the protection order is in force.

I now refer to counselling for the respondent. The court must direct a person who has a protection order made against him or her to attend counselling. An associated person may also be directed to attend the counselling programme. The committee recommends that the court be able to exempt the respondent from counselling only if there is no appropriate programme available. This change removes specific reference to lack of transport on the part of the respondent as a reason for not being directed to attend counselling.

The committee recommends that an amendment be made to allow the court to give a programme provider some information about the particular proceedings, to enable the provider to target the programme to persons referred. At present there is a variation in practice, which means that some programme providers receive no information about the particular circumstances behind a referral.

The Bill allows for a programme provider to excuse the respondent from attending counselling under special circumstances. The committee recommends that where a person is excused from attending a counselling session, he or she must make up for the missed session or sessions with an additional session unless the programme provider considers that the absence has not affected the benefit of the programme.

The committee also recommends the insertion of a new clause 24, which requires the programme provider to inform the registrar when a respondent fails to attend a session from which they have not been excused. Upon completion of the programme, the programme provider must give notice to the registrar stating that fact and noting whether the respondent was excused from attending the session or participated fully in the programme.

The committee recommends that the programme provider be able to request a variation of the direction to attend counselling where it is considered that the programme was not appropriate or the respondent was not participating fully. Under these circumstances the judge may call the respondent before the court to explain his or her conduct. The judge may then vary, confirm, or discharge the direction to attend counselling.

The committee considered the question of confidentiality as it relates to family law issues. The committee recommends that an amendment to clause 26 be provided, which makes it an offence for a counsellor to disclose information about a client. The provision in this clause would be replaced with a statutory duty not to disclose

information except under the following circumstances: when reporting to the court about non-attendance, participation, or suitability of the programme; for proceedings where the respondent is called before a judge for investigation of an offence committed during a programme; where necessary to prevent a serious or imminent threat to public safety, with the consent of the respondent; or where the disclosure is made to another programme provider working on an associated case.

The committee recommends that any counselling programme to which a person is referred and the provider of that programme must be approved in accordance with the regulations made under this Act.

The committee considered the Bill and also made amendments to the Guardianship Act relating to custody of and access to children in cases involving violence. A number of submissioners made oral submissions and written submissions regarding corporal punishment. Many submissions were received on the subject of corporal punishment and the definition of **domestic violence** set out in new section 16A in clause 105 of the Bill. The submissioners argued that corporal punishment should not be excluded from this definition.

The committee recommends the deletion of the second paragraph of the definition, which relates to corporal punishment. That paragraph had been included in the Bill to make it clear that the use of reasonable force by way of correction towards children, which is permitted by section 59 of the Crimes Act, was not caught by the definition. The committee accepted this advice and that paragraph was deemed unnecessary.

This change does not affect the legal position about corporal punishment. Section 59 of the Crimes Act still does not permit parents to use force against a child that would amount to abuse, but that does not mean that a parent is not entitled to use reasonable force to control his or her child by way of spanking and the like. Many submissions called for the repeal of section 59 of the Crimes Act. The committee gave consideration to this issue, but was not prepared to make any recommendation to suggest that section 59 of the Crimes Act be repealed, notwithstanding that this matter does not come within the context of the review of this Act.

With regard to allegations of violence made in custody and access proceedings, clause 105 inserts new section 16B into the Guardianship Act. The committee recommends that this clause be clarified to restrict the circumstances in which a court must determine whether the allegation of violence is proved to an application for a custody order. The clause is further amended to make it clear that the court is not required to make its own inquiries to determine the substance of the allegation.

This Bill is important, as it relates to **domestic violence** throughout New Zealand. It is a Bill for which an appropriation will need to be made to ensure that there is adequate funding so that the counselling services and the services that are necessary to implement this Bill are adequately provided for. The committee gave consideration to the amount of funds available, and recommends the Bill to the House.

Hon. PHIL GOFF (Roskill): This afternoon the Opposition will support the report back of this Bill, just as it supported this Bill at the select committee, and will support the passage of this Bill as quickly as possible. I have to say, in qualifying that support, that Opposition members do not have confidence that the Government will provide adequate resourcing of this Bill to ensure that the legislative provisions aimed at providing greater protection to victims will be backed up by the resources to make those provisions effective. This Bill did not get legislative priority and political priority to be introduced when it ought to have been introduced some years ago, and we fear that that lack of political priority will spill over in a lack of commitment to making the legislation work.

Having said that, I pay tribute to the officials who worked on this Bill. The original Bill was a product of solid work and extensive consultation. I think that the officials got that pretty right, by and large. The committee itself received 67 submissions from public organisations and it heard from a range of expert opinions from those with experience in dealing with domestic violence. During the select committee stage we sought a further score of reports from officials to follow up areas of concern, and that resulted in 42 pages of amendments to the original Bill.

I do believe that this Bill is a good legislative response to the problem of domestic violence, which must be considered as one of the most serious social problems of this time. I must say, however, that we do regret the delay in getting the Bill to the House. It is now 8 years since the Roper commission of inquiry, which reported that 80 percent of violence in this country is domestic violence. It is 3 years since the Victims Task Force reported on the need for vastly increased assistance to the victims of violence in the home. The Davison inquiry was some 18 months ago. That reported on the need for changes in the Guardianship Act to provide for greater protection for the child.

Late last year we saw a report commissioned by the Department of Social Welfare and written by Suzanne Snively, which estimated that domestic violence is currently costing this country \$1.2 billion a year. That is in financial costs; nobody can readily estimate the human costs of domestic violence---the physical damage, the sexual abuse, the psychological abuse, and the fear and insecurity that makes life hard to endure for far too many women and children, in particular, in this country. We have long understood that the insidious effect of domestic violence was intergenerational; that the role model it provided meant that that violence would carry on from one generation into the next. All those things indicate the importance of this legislation.

I believe that the Bill represents important and positive advances in the legislative response to violence of that sort. It extends the range of people who are protected from domestic violence to cover those in all manner of domestic relationships. It broadens the categories of domestic violence, not only physical violence but also sexual abuse and psychological abuse. It increases the sanctions on those who breach a protection order to a fine of up to \$5,000 and 6 months' imprisonment. At the select committee we changed the provision to require that any three breaches of a protection order could result in imprisonment of up to 2 years. It is a serious offence, it has dangerous implications for society, and it requires at least that level of sanction.

The Bill insists that offenders be referred to programmes to seek to change their behaviour and to reduce recidivism. The Bill ensures that victims will not have to meet the cost of any legal aid that they receive in respect of getting a protection order. The Guardianship Act is changed so that the safety of the child becomes paramount. The effect of the Bill, I believe, is to send a very clear message that violence as a means to resolve domestic disputes simply

will not be tolerated by society.

But we need more than legislative change to produce a real change in the level of domestic violence and to meet the objective of the Bill, which is to provide greater protection for the victims of such violence. Real protection involves preventing people from becoming victims in the first place. It involves dealing with the causes of violence, and that means not waiting until it happens but introducing techniques such as early intervention. So if we in this House are serious about preventing violence, we have to start with early-intervention programmes---dealing with at-risk families, dealing with them from the time of the birth of a child, and getting home visitors into that home, as they do in the Healthy Start programme, and as Labour recommends in its A Good Start policy.

We need programmes like Eliminating Violence in schools, which is an excellent programme with proven results, but there is no central Government funding other than a pilot through the Special Education Service. We need programmes like the Stop programme, which is aimed at preventing sexual abuse. But, again, those programmes are not expanding; they are being closed down through lack of resources. We need a public education programme that changes the culture of this country and makes violence across any group in New Zealand totally unacceptable. We need to do those things first if the objectives of this Bill are to be met.

In addition to those prevention programmes, it is essential that the demands that will be generated by this legislation can be met by adequate resourcing. We received a report in the committee that the Government was intending to make available over a 3-year period the total sum of \$9 million. However, the Government knows---and I have a copy of the report to the Cabinet committee---that that sum is grossly inadequate. Nine million dollars over 3 years is not enough. The cost set out in that report suggests that the costs will be more than \$9 million---some \$10 million a year, not spread out over 3 years. Legal aid costs are estimated to go up by around \$2 million a year. Changes to the Guardianship Act will cost another \$3 million a year.

Currently, about 5,000 cases of family violence are coming before the courts. The Chief Family Court Judge reported to the select committee that that figure will rise from 5,000 to 9,000 because of the broadening of the protection involved and the cases that will be covered by it. That puts pressure on the court. The Cabinet committee paper suggests that that money should come out of some other area of justice policy. Already we have crises right across the board in justice---trials being held up, defendants being allowed to walk free because of undue delay. Where will that money come from? The Government has not given a satisfactory answer. We need the commitment of new money to make this policy work.

There is also the requirement that offenders must be referred to compulsory programmes to change their behaviour. That has a cost. It is estimated it will be about \$4 million a year. So we are talking about an overall cost that vastly exceeds the amount of money that the Government has said it is willing to budget for these programmes. That is even excluding the additional support that needs to go to groups such as victim support, women's refuges, and the like. That so far has been on the cheap. The extended role of those groups requires that their funding be placed on a professional and a reasonable level. Put shortly, the Government cannot rely on rhetoric alone nor on underfunded legislation to resolve the problem of domestic violence.

If the financial cost alone---estimated by Suzanne Snively to be \$1.2 billion---represents the cost of domestic violence to this country then we should not be quibbling about a sum of \$10 million a year. That money should be in there. We should make sure it works. We will get a good return on that investment.



*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
**DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee**  
**Main speaker - BRIAN NEESON**

BRIAN NEESON (Waitakere): I am pleased to rise to speak to the report back of this Bill. Both my colleague on this side of the House and the member for Roskill have elaborated on the Bill itself and on the targets of the Bill. I would like to build on what has been said already and send a message to those out there, particularly men, who are so full of themselves that they throw their weight around and wind up in a situation where they are bashing and destroying their own families and, in the end, themselves.

This Bill has been produced for victims. It is not a Bill that will solve the problems out there without there being a change in attitude. That change of attitude has to come from those people who are involved in these situations. The need for this Bill comes about because of a breakdown in responsibilities and relationships in society. So many people are quick to rush out to grab their rights---the big I, my, and me---and it overwhelms and overtakes their responsibilities.

Relationships break down because people forget that they have to give. When people join together in a relationship they have to be in the business of giving to one another---giving to their family and giving to those around them---if they are to keep themselves out of a situation where they will wind up in court and be dealt to fairly severely with what is an extremely good instrument in the hands of the law. I am talking about the people who forget that they have responsibilities and who demand continuously that their own wants, desires, needs, and egos be met out there in the world of families and relationships.

Most of the submissions were either from counsellors of some sort or from the victims themselves, which is understandable. One did not have to listen to many of those victims; it could be seen in their faces and in their eyes that they had been mortally wounded. For many of them their relationships and problems were years behind them, but the damage that had been caused in those relationships had not left them. Of course, 100 percent of those victims were women---women who tried their best. They could not defend themselves against brutality.

I want to send out a warning today to those who do have these problems and tell them that they will be dealt with severely if they do not go and get some help. There is help out there. Unfortunately, it is not the traditional help that there used to be, such as extended families and people who could take the pressure off when things were getting tough. But there is other help out there, and I say to these people: ``Get to it before you have to be dealt with by this legislation.'' This Bill will deal severely with people who want to continue to take, grab, smack, belt, and punch.

If people need help, there is help available. This Bill is set for victims, it is set for children, and it is set to keep safe the people who are being punched and smacked about. The strongest message I can give to anybody out there right now is that if the tension is on, if the pressure is on, if they feel in any way that they are going to be put into a situation where they will damage their families, themselves, their partners, or their relationships, they should get help early before they wind up having to be dealt with by this legislation.

*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
*DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee*  
*Main speaker - JUDITH TIZARD*

JUDITH TIZARD (Panmure): I welcome the report back of the Domestic Violence Bill. It is a Bill that has long been in gestation. I have now been in Parliament for nearly 5 years. In all that time the Opposition has been calling for the Government to move on this Bill. I have to say that when the Government finally moved, a good Bill was produced. I think it has been made much better by the work of the select committee.

However, it is a Bill that we have some deep disquiet about because of the attitude of some Government members who are responsible for the financing of this Bill and because of the continuing actions of Cabinet in its funding of programmes to prevent control and to heal the consequences of violence.

This Bill is the result of many reports, like the Roper report and the Victims Task Force report. I want to pay particular credit to the authors of that Victims Task Force report because it is mainly their work that we are seeing before the House today. I do say that it causes me some disquiet that the House has taken more than 3 years to respond fully to that report. I want to say that the Opposition's greatest amount of disquiet, having seen this Bill reported back to the House, is on the issue of resourcing.

Even the hardest of hearts and the toughest of minds in Treasury must be able to look at a report like the one written by Suzanne Snively last year and see that the cost of domestic violence to this country, in financial terms alone, is far too heavy for us to tolerate. The estimated cost of domestic violence to the economy is \$1.2 billion a year, let alone the cost of domestic violence in human terms and in family terms that goes from generation to generation.

The committee worked long and hard on this Bill. I compliment the dozens of people who appeared before the select committee and the hundreds of people who were involved in putting together submissions on this Bill. The submissions were all carefully thought out and very well presented. They were often the result of great personal pain. I believe this Bill is much better for that process, and I want to compliment those people on their efforts.

We are told that every year about 5,000 cases of domestic violence appear before the Family Court. Those cases are just the tip of the iceberg, as the Hitting Home report indicated. This Bill starts a process that has to go much wider and much deeper. I particularly ask Government Ministers what their commitment is to making sure that violence is prevented, not just stopped, in our community when it gets to the level of the Family Court. Those Family Court cases, tragic though they are, are only a fraction of the violence, of the abuse of power, and of the abuse of trust and kindness that occur in families.

This Bill does many things. It extends the penalties and gives greater protection for people who are in violent situations. That message must get out to people who are in violent situations. It extends the range of people who are involved. We have to be very careful because we are talking about domestic violence, we are talking about families, and we are talking about people who are ordinarily within a household. This Bill sets out to try to offer protection in the case of physical abuse, of sexual abuse, and of psychological abuse such as intimidation, harassment, damage to property, and other acts that lead to physical violence.

We recognise that violence is not just about hitting. It is about controlling, manipulating, and abusing in other ways. We have simplified the law relating to protection orders. We have said to the

police that they should ordinarily arrest immediately there is a complaint of violence. That person, once arrested, should be kept for 24 hours to cool down unless there is very good reason they should not be. They should not get bail. Protection orders should be issued immediately, obviously with the right of appeal by the person on whom they are issued. The police must move to protect New Zealanders from violence. Breaches of protection orders have much greater penalties. The penalty for third or subsequent breaches within 3 years is increased to 2 years' imprisonment.

[The question having been raised by the Senior Opposition Whip and the bell having been rung, the Speaker declared that a quorum was present.]

*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
**DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee**  
 Main speaker - DIANNE YATES

DIANNE YATES (Hamilton East): I wish to speak on the report back of this Bill particularly as the member for Hamilton East, and I particularly want to thank Hamilton people who made submissions on this Bill. I also thank the committee for travelling to Hamilton to hear those submissions. I particularly thank Neville Robertson and Ruth Busch, who are lecturers at the University of Waikato. I thank them not only for their submissions but for the initial research they did for the Victims Task Force way back in 1992. I thank them not only for their academic research and their input into this Bill but also for living through many of the experiences of the people involved, and for the tremendous volunteer work that they have done with the Hamilton Abuse Intervention Project.

I thank those officials who worked on this Bill for the understanding they gave to the purpose of the Bill, which is to protect the victims of domestic violence---in particular, women and children. This Bill will prevent them not only from being victims of domestic violence but from being revictimised by the system---our legal system itself---by making protection orders meaningful and ensuring that they are enforced.

But what is most important is that the Bill now contains a whole change of attitude in relation to domestic violence. One word in particular has been dropped from this Bill, and this is the word ``act''. I thank those who have been working on the drafting of the Bill for recognising that the essence of this issue is that we move away from dealing with just violent acts, and look at behaviour.

I can think of an example of a case quoted in the Victims Task Force report of a man who kept going into a home and doing what we might think was a kind deed. He would go into the home where he had previously lived---he was under a non-molestation order---and do the dishes. That in itself was not a violent act but it was a threatening act. That type of behaviour is regarded as psychologically threatening because it shows that the person still has power and control over the people in that household.

So I thank the officials who helped in making the changes to this Bill for understanding the change in emphasis away from just acts of violence, to include behaviour that is psychologically threatening, which is now within the definition.

I also express some sympathy for those who sent in petitions in relation to mandatory arrest. Mandatory arrest was regarded as somewhat impossible by people on the select committee. However, I do

hope that the policing guidelines in relation to domestic violence will state the circumstances in which a person who breaches a protection order should not be arrested, and I hope the police will include this element in regulations.

I am also concerned that now there are five pages in the Bill about firearms---five pages about why boys can keep their toys. I think it is absolutely ridiculous that, in a sense, we have spent such a lot of time ensuring that a possum hunter out the back of Benneydale can keep his rifle and his gun licence. The restrictions in this Bill are more lenient than those for someone who commits a traffic offence. Regardless of whether someone steals a rifle in order to kill his wife, I still think too much attention is paid in the Bill to allowing people to keep their weapons; more attention is paid, as I have said, to the rights of boys to keep their toys than to the rights of children to protection against violence.

Once again I thank those who have made submissions, especially, as the previous speaker has mentioned, those who gave of their personal experience, at some considerable cost---people who told us of their own lives. To them it was, as has been mentioned, a painful experience to have to relive those experiences in front of a select committee. I thank them for their bravery, and I thank them for the help that they have given to others, to people who might become victims in the future. I know it was a particularly difficult thing for some people to do.

I also thank my colleagues on the select committee for bearing with me, because I know I have been particularly picky about certain aspects of this Bill.

*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
*DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee*  
*Main speaker - JILL PETTIS*

JILL PETTIS (Wanganui): The first question that I want to ask in relation to the report back of the Domestic Violence Bill is why the seizure of firearms has not been made automatic. I was, and remain, very concerned about this particular aspect of the Bill. I have done some reading on this, with particular reference to statistics from the United States. While New Zealand is not the United States---and thank goodness for that---the statistics that apply in America can still very much apply here. In that country just having a gun in the home makes it three times as likely that someone will be killed there.

Some homes in New Zealand are like war zones. Even having a firearm in the house can be intimidating for a woman who has been battered. That firearm may never come out of the cupboard, but it is still extremely intimidating for her to know that it is present in the house, and can be used at any time to make her and her children cower into submission. Even mild abuse must be taken seriously. I remain very, very concerned that the seizure of firearms after an incident of domestic violence has not become mandatory.

There seems to be a sort of fall-back position in that the party seeking the protection order can make a case for special conditions relating to weapons to be attached to the order. In a situation of high tension, a great deal of emotion, and physical stress, the party seeking the protection order---the victim---has to make that application. Quite frankly, I do not think that is a realistic expectation to put on somebody, generally a woman, who, when an incident has taken place, is also worrying about the safety of her children.

The other aspect I want to raise is the \$9 million of extra funding. Of course we welcome any extra funding for this particular area. But how much of that \$9 million will actually go to the victims? No victim is looking to make money out of domestic violence, but I draw attention to the fact that one woman met costs of \$7,000 in dealing with a domestic violence situation, yet her three children still died. In another case a woman had to pay \$5,000. Those are extraordinary sums of money for women who often are already financially and economically disadvantaged because of the situation that they have had to live in for many, many years. Where are women going to get sums like \$7,000 and \$5,000 to protect themselves and their children? How much of that \$9 million will go into lawyers' pockets, and how much is there to help the victims? I query also the double victimisation. There is the physical and emotional violence, then the huge worry that a woman has to face in trying to raise money to protect both herself and her children.

The issue that I want to finish on is the cessation of the Stop programmes. These programmes were set up for self-referrals of men and youths who had been sexual offenders. The central region Stop, which operated in Palmerston North---and certainly men from my electorate were involved in that programme---is now no longer because of the unavailability of a paltry \$100,000. Now, \$100,000 may sound like a lot of money to many voluntary organisations, but when one considers that it costs approximately \$50,000 a year just to keep one person in prison, \$100,000 is a relatively insignificant amount. This programme had to stop because of the lack of funding.

*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
**DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee**  
**Main speaker - Hon. KATHERINE O'REGAN**

Hon. KATHERINE O'REGAN (Associate Minister of Women's Affairs): I wish to speak in this report-back debate, but perhaps I may not take my full time. I would like to congratulate the select committee on the work that has been done. I am pleased that the Bill at long last is back in the House, and, hopefully, it will go through all its stages, maybe before the end of this session but certainly before the end of the year.

An area that I do want to concentrate on is the provisions relating to weapons. When the Bill was introduced I noted at that time---and I think the Minister of Justice did too---that the committee should ask for and listen to submissions on the issue of arms or weapons. Like the member for Wanganui, I would also like to know why we have not proceeded further with regard to the mandatory removal of weapons upon the application of a protection order.

Some of the committee members would say that there was no supporting evidence, and in fact the committee was informed by the police that very few domestic-related homicides were carried out by licensed firearm owners. But I sure as hell imagine that in a lot of households the male threatens hell out of his wife by pointing a gun at her. Such a case is probably not in the police statistics. That is the sort of information I would like to see, because in that case the gun is used not in the sense of firing it, but certainly to threaten and scare the living daylights out of the woman and children in that relationship.

Hopefully, in the second reading stage we will get more information from the committee members about why they were not persuaded to extend the issue; to make sure that weapons were removed

mandatorily upon application for a protection order. I believe that the Bill would be better if that did occur. I hope the House will still keep an open mind on that when it comes to the Committee stage.

I know it has been quite hard trying to persuade the police that that issue should proceed, and I know that there are members of the House who agree with them on that issue. The police may have information that very few domestic-related homicides are carried out by licensed firearm owners, but we should think further afield, look to the future, and listen to what the women have been saying; listen to the people in those families, those households, who have actually experienced guns being waved at them in a threatening fashion.

So that is the area that I hope this House will address in the second reading stage, and, if the House believes that it is necessary, perhaps we will even proceed in the Committee stage with an amendment to this legislation. I am mindful of the comments made by members of the committee who believe and accept the view that perhaps at this point in time the police view should be upheld, but I am sure they will not take too much persuading to consider an amendment in the Committee stage. To me, weapons are an abomination. I have no love for them whatsoever. One of the members commented about the boys keeping their toys; I think in this instance the criticism implied in that statement is justified.

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*Hansard - Stage: REPORT OF SELECT COMMITTEE - 10 OCT 1995*  
*DOMESTIC VIOLENCE BILL : Report of Justice and Law Reform Committee*  
*Main speaker - JILL WHITE*

JILL WHITE (Manawatu): I, too, support this Bill, and I make a strong plea, as others have done, for the resources to be made available to underpin this Bill, in order to make it effective. There has been considerable interest in this Bill. Out in the community, a lot of hopes are pinned on it. There are a lot of anxieties about it, as well. Some anxieties stem from the delay in its progress, while others stem more recently from concern about the possibility of unintended consequences. I feel I must mention those concerns today.

One anxiety that has been brought particularly to my notice has been that the anger of men, in particular, must be dealt with. If it is not dealt with outside the Bill, some of the provisions of the Bill will aggravate that anger. The particular example a lawyer was speaking to me about was that of visiting rights being permitted only under supervision, because of the violence of, most particularly, a father. There was a strong feeling that this would lead to a tendency to blame the ex-partner, the supervising person, or perhaps even the children themselves, and to a build-up of anger and an explosion of violence.

It has already been said in this House today that the real protection is in changed behaviours, and I agree with that. I do have to make a comment on something that was said by the member for Waitakere. He said: ``Go and ask for help. It is there.'' I say that men in Palmerston North, in Wanganui, and in other parts of the central region covered by the Stop programme, asked for help from that programme. When the programme was there they got help, but its funding ceased and the help is no longer there. That is because there were gaps in the policy, there was no certainty of funding, and the funding that was provided was inadequate.

If this Bill is to work, there has to be integrated funding between different departments, there has to be certainty of funding,

there has to be adequate funding, and there must be resources for those people who refer themselves. We cannot say that the services are there only for those who go, say, through the justice system.

Resources must not only be there for management of anger but also for the victim---through Women's Refuge, good quality counselling services, and victim support groups. That cannot be stated too often.

I also want to make particular mention today of the elderly in our community. It is becoming increasingly evident that the extent of elder abuse is greater than anybody had imagined. I welcome the parts of the Bill that acknowledge this, and which seek to give protection to the older members of our community. I have a question in relation to that, and that is: what steps are being taken to ensure that the elderly who are at risk are made aware of their rights to protection? What concerns me is that those who are abused are those who are most vulnerable, in that they are very often dependent on those who abuse them. They are isolated from mainstream society, and it seems to me that there is very little point in having protection in the law if people do not know that they are protected, and do not know how to access those provisions that are set up for their protection. I would like that question to be answered at some stage in this debate.

Finally, I want to talk briefly about the legal aid provisions, and I welcome the fact that legal aid will be more readily available to victims, without then having to be paid back. But there are some qualifying clauses, and I think it is important that we explore those, in order to know who sets the criteria and whether appeals can be made.

Motion agreed to.

*Hansard - Stage: POINT OF ORDER - 10 OCT 1995*  
POINT OF ORDER---GOVERNMENT NOTICE OF MOTION No. 2  
Main speaker - Hon. Dr MICHAEL CULLEN

Hon. Dr MICHAEL CULLEN (St Kilda): I raise a point of order, Mr Speaker. I have sought four times to have Government motion No. 2 debated over the last 4 weeks. It continues to sit on the Order Paper. I seek leave for Government motion No. 2 to be withdrawn.

Mr SPEAKER: Leave is sought for that purpose. Is there any objection? There is objection.

*Hansard - Stage: IN COMMITTEE - 10 OCT 1995*  
APPROPRIATION (1995/96 ESTIMATES) BILL---ESTIMATES : In Committee  
Main speaker - The DEPUTY CHAIRMAN

APPROPRIATION (1995/96 ESTIMATES) BILL---ESTIMATES  
In Committee

Debate resumed from 5 October.

The DEPUTY CHAIRMAN: On Thursday, 5 October there was an error in a division list on the question that vote: Internal Affairs be reduced by \$150,000 from the appropriation of \$10,419,000 for output D1: National Archival Services. The result announced was Ayes 31,

Noes 38. The correct totals were Ayes 30, and the Noes 38. I now order that the division list be corrected.

Before the Committee begins debate on vote: Crown Health Enterprises, I should point out that this debate is not on the performance and current operations of Crown health enterprises. That matter is included in the debate on State enterprises and public organisations. The appropriations to be debated in vote: Crown Health Enterprises relate to the provision of advice to Ministers by the Crown Company Monitoring Advisory Unit, and to capital injections to Crown health enterprises.

Vote: Crown Health Enterprises



*Hansard - Stage: Stage>HOUSE IN COMMITTEE - Date>7 DEC 1995*  
*Title>DOMESTIC VIOLENCE BILL : In Committee*

**DOMESTIC VIOLENCE BILL**  
In Committee

3.09 p.m.

Clause 1. Short Title

The CHAIRMAN put the question that the amendment set out on Supplementary Order Paper 146 in the name of Hon. D A M Graham (Minister of Justice) be agreed to.

Amendment agreed to, and clause as amended agreed to.

3.24 p.m.

Clauses 2 to 17A

The Committee agreed to postpone consideration of clauses 2 to 17A.

3.25 p.m.

New heading and new clauses 17B to 17G

The CHAIRMAN put the question that the amendments set out on Supplementary Order Paper 149 in the name of Hon. D A M Graham (Minister of Justice) be agreed to.

The Committee divided on the question that the amendments be agreed to.

Ayes 49

Austin	Dyson	Mackey	Sinclair
Bradford	English	McCully	Sowry
Braybrooke	Falloon	Mallard	Sutherland
Burton	Field	Marshall	Sutton
Carter C	Goff	Matthewson	Swain
Carter J	Hawkins	Neeson	Tennet
Caygill	Hodgson	Northey	Wetere
Clark	Hunt	O'Connor	Yates
Cliffe	Keall	Peck	
Cooper	Kelly	Pettis	Tellers:
Cullen	Kidd	Robertson H V R	Fletcher
Dalziel	King	Robertson J	Tizard
Duynhoven	Lee S	Shipley	

Noes 22

Burdon	Gray	McKinnon	Storey
Carter D	Gresham	McLauchlan	Williamson
Dunne	Hilt	Maxwell	
East	Kyd	Meurant	Tellers:
Gardiner	Lee G	Revell	Neill
Graham	McClay	Simich	Roy

Majority for: 27

New heading and new clauses agreed to.

4.47 p.m.

The CHAIRMAN put the question that the amendments set out on Supplementary Order Paper 148 in the name of Hon. D A M Graham (Minister of Justice) be agreed to.

Amendments agreed to.

4.48 p.m.

Clause 2 as amended by Supplementary Order Paper 148 agreed to.

Clauses 3 to 7 agreed to.

Clause 7A as amended by Supplementary Order Paper 148 agreed to.

Clauses 8 to 11 agreed to.

Clause 12 as amended by Supplementary Order Paper 148 agreed to.

Clauses 13 to 17A agreed to.

Clauses 18 and 18A agreed to.

Heading and clauses 18B to 18F negatived by Supplementary Order Paper 148.

Clause 19 as amended by Supplementary Order Paper 148 agreed to.

New clause 19A inserted by Supplementary Order Paper 148 agreed to.

Clauses 20 to 22 agreed to.

Clause 22A as amended by Supplementary Order Paper 148 agreed to.

Clauses 23 to 24B agreed to.

Clause 25 as amended by Supplementary Order Paper 148 agreed to.

Clauses 26 to 63 agreed to.

Clause 64 as amended by Supplementary Order Paper 148 agreed to.

Clause 64A agreed to.

Clause 65 as amended by Supplementary Order Paper 148 agreed to.

Clauses 66 to 69 agreed to.

Clause 70 as amended by Supplementary Order Paper 148 agreed to.

Clause 71 agreed to.

Clauses 71A and 72 as amended by Supplementary Order Paper 148 agreed to.

Clauses 73 to 75 agreed to.

New clause 75A inserted by Supplementary Order Paper 148 agreed to.

Clause 76 agreed to.

Clause 77 as amended by Supplementary Order Paper 148 agreed to.

Clauses 78 to 86N agreed to.

Clause 86O as amended by Supplementary Order Paper 148 agreed to.

Clauses 86P to 87 agreed to.

Clauses 88 and 89 as amended by Supplementary Order Paper 148 agreed to.

Clauses 90 to 94 agreed to.

Clause 95 as amended by Supplementary Order Paper 148 agreed to.

Clauses 96 to 109 agreed to.

Clause 110 as amended by Supplementary Order Paper 148 agreed to.

Clause 111 agreed to.

4.50 p.m.

The Committee divided the Bill into the **Domestic Violence** Bill, the Summary Proceedings Amendment Bill (No. 4), the Crimes Amendment Bill (No. 4), the Guardianship Amendment Bill (No. 3), the Family Proceedings Amendment Bill (No. 2), and the Legal Services Amendment Bill (No. 2), pursuant to Supplementary Order Paper 145.

Bill reported with amendment.

## 1995\_12\_12 3rd reading DV Act

*Hansard - Stage: Stage>THIRD READING - Date>12 DEC 1995*  
*Title>DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings*  
*Main speaker - Speaker>Hon. D A M GRAHAM*

### DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM

#### Third Readings

Hon. D A M GRAHAM (Minister of Justice): I move, That the Domestic Violence Bill, the Summary Proceedings Amendment Bill (No. 4), the Crimes Amendment Bill (No. 4), the Guardianship Amendment Bill (No. 3), the Family Proceedings Amendment Bill (No. 2), and the Legal Services Amendment Bill (No. 2) be now read a third time. This is important legislation. One of the tragedies of modern-day life is that domestic violence is prevalent in our society to a degree that is totally unsatisfactory and unacceptable. A great deal has been done by community groups to try to assist families where violence is occurring, and it is the obligation of the Government of the day to take the steps that can reasonably be taken to try to assist.

After due deliberation, the Government introduced the Domestic Violence Bill. It went to the select committee, where a large number of submissions were received. It has been a constructive effort from the select committee, and, indeed, from the House during the Committee of the whole House. We now have the third reading of legislation that it is hoped by all members will contribute to the reduction in domestic violence in New Zealand homes. The Domestic Violence Bill is quite far-reaching. It redefines domestic violence, so that it does not now relate only to physical violence; it includes psychological abuse---which can be equally bad---to, normally, the wife or the children. The Bill also redefines ``domestic relationship''. It broadens the definition of those who can apply for a protection order, so that it is not just the husband or the wife; it may be the child, or it may be the parent seeking an order to protect the parent from a teenage child. Unfortunately, these are facts of life in New Zealand today.

The Bill also tries to speed up the process. When an application for a protection order is made and a temporary order made in the first instance, then, historically, that has had to be made final later on, and that required a further appearance and a further hearing before a Family Court judge. The Bill provides that the protection order will become final automatically if the respondent takes no steps. That, too, is a very good move that will help the courts, and it will certainly help the applicant seeking the protection order. We spent some time in the Committee of the whole House talking about firearms and whether that should be a standard condition of a protection order, or whether it should be more discretionary.

Rt Hon. Jonathan Hunt: Does the Minister want an extension of time to deal with all the Bills?

Hon. D A M GRAHAM: No, thank you. At the end of the day the Committee decided that it ought to be a standard condition of a protection order, that it was a privilege to have weapons, and that,

if a person were obviously violent, then that privilege really had been forfeit and the arms licence, and, indeed, the weapons, ought to be seized from that person. So that is to be the law now.

The legislation covers matters relating to property and tenancy orders, furniture orders, and so on. It tidies up some of the procedures I mentioned before. It deals with foreign protection orders, and makes a number of other quite major amendments, which I hope will be of assistance to both the courts and the applicants.

The only matter I wish to comment on relates to the Guardianship Amendment Bill (No. 3) and the question of custody. This is a very difficult matter because parents are, as of right, normally entitled to access to their own children. But the fact is that some parents are violent and they have lost control of themselves when they have had custody of their children, and there have been some terrible tragedies. To overcome that, Parliament is now about to enact a law that will make it much more difficult for violent parents---normally the father---to have custody of or access to their own children. Indeed, a violent parent will not get access unless there is some satisfactorily supervised access arrangement and/or that person can satisfy the court that the children will be safe. So that will not be easy. No doubt it will cause some distress to parents. However, I have few qualms about that. It seems to me that if people are violent, then there must be sanctions, and that may be one of them. It will make it difficult for the courts, because they have to try to weigh up the evidence and decide whether it is right and proper to allow access. That is not easy, and sometimes they will be wrong. It is easy to be critical after the event. We have to rely on the judges to exercise their discretion as best they can, and I have every confidence in them.

I am very pleased that this legislation has now reached its third reading. I have been concerned for many years about the violence in our community. We will provide some programmes to assist the applicants for a protection order, when they wish it, and we will require programmes to be undertaken by the respondents, whether or not they like it. We will provide some counselling services for the children who come from violent homes. All of those, I think, are quite positive moves. We have set aside quite substantial funding, with a right to go back to Cabinet if the funding proves to be inadequate for the purposes.

So we are really embarking now on some quite new laws, and I think that the families in New Zealand will benefit from them. I want to make it very clear to those families where violence is occurring that this Parliament will protect the victims of that violence, and it will exert a sanction on those who perpetrate it. We cannot continue to have the amount of violence in our homes that we have at the present time. That is just totally unacceptable. The police have responded well. They are now enforcing the laws much more rigorously---people are being arrested, they are being held in custody for 24 hours, and matters of that kind, when violence occurs. I hope this legislation will be a major contribution to the fight against violence in our families.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - Hon. PHIL GOFF**

Hon. PHIL GOFF (Roskill): I support the third readings of this legislation. It is legislation that the Labour Opposition has

endorsed and facilitated right from its introduction. Indeed, I pay tribute to my colleagues in the women's caucus of the Labour Party, who have, literally for years, fought for this legislation, which is long overdue.

I believe that the legislation is some of the most important social legislation we have had before this term of Parliament. It recognises the plight of literally thousands of people in New Zealand, predominantly women, who are battered, and who live under the ongoing threat of physical abuse, sexual abuse, and psychological abuse. It recognises the fact that the home, which ought to be a sanctuary for people, too often is the place of violence, and it puts behind us the myth that the worst aspects of violence that occur in our community are violence in the street and violence perpetrated by a stranger.

It recognises, too, that violence is intergenerational, and until we can break the cycle of abuse in the home, we will keep seeing the level of violence that is occurring in this country. This legislation acknowledges that violence in the home is as unacceptable as violence that occurs anywhere else in society. Indeed, it is often worse, because on top of the pain and the suffering caused by abuse it represents a betrayal of trust.

What this legislation does is very important. It provides greater protection for the victims of violence. It extends protection from violence to a wider range of people---not simply to partners, de jure and de facto, but to all family members, to those who share a household, and to those who are in any form of close relationship. It extends the definition of violence so that violence can mean not only physical abuse and sexual abuse, but also psychological abuse. It extends that protection, not only against the respondent, but also against the associates of the respondent who may be procured to act violently.

It seeks to ameliorate the consequences of violence through programmes designed to help the victim. Most important, it seeks to address the cause of violence in the offender by making mandatory the requirement for offenders who have a need for a change in their attitude and in their behaviour to attend programmes.

The legislation increases sanctions---not before time---which is a recognition by this House that the nature of the violence perpetrated is very serious. It contains new protections for the victims---restricting information, for example, available in public registries so it is more difficult for the potential offender to trace the whereabouts of the victim. It places the onus on violent individuals to prove they are fit and proper people to hold a firearms licence or to own a weapon. It does not place the onus on the person who has been abused to prove that that individual is violent. By definition, a person who is violent is not a fit and proper person to hold a firearm, and I will come back to discuss that a little later, because that was a major point of contention in the Committee stage.

Equally, and very important, the legislation places the onus on people who have been violent towards their partner to prove, if they wish to have access to or custody of the children of that relationship, that they are indeed safe, recognising the close correlation between those who are violent towards their partners and those who also have the ability to be violent towards their children. Under this legislation, persons applying for a protection order are granted legal aid without the requirement that they should make a contribution towards that aid. The legislation is, in all these respects, landmark legislation.

I want to pay tribute to all those who have contributed to bringing it to this stage. I pay tribute, for example, to those researchers who have worked hard to promote this cause and who have worked hard on the report for the Victims Task Force. Ruth Busch, Hilary Lapsley, and Neville Robertson are three individuals who come

to mind who have made a tremendous contribution. I pay tribute to other advocates, such as the Women's Refuge movement, which has put in many hours of work to protect the victims of this form of violence. I also want to pay tribute to my colleagues who have worked---long before the Minister introduced the legislation to the House---to promote the need for its introduction and to ensure that the legislation was finally brought here before us.

The legislation is a critical prerequisite towards extending the protection to victims of domestic violence. But while a prerequisite, it is not in itself a sufficient condition to achieve this end. In particular, and to emphasise a point that was made by the Chief Family Court Judge, it is essential that programmes for victims and for offenders be funded properly. It is essential, too, that the Family Court be adequately resourced to carry out the responsibilities placed on it. If we have legislation but do not have the resources to carry into effect the intent of that legislation, then we are producing legislation that is doomed to failure.

In addition, while this legislation creates an appropriate framework for dealing with violence after it has occurred, a critical role exists for the Government to act through early intervention to prevent violence by dealing with its causes. It is no good our relying solely on, and improving the quality of, the ambulance at the bottom of the cliff. We need to act now to deal with the causes that lead to that violence occurring in the first instance.

It is a matter of sadness for me that while we are debating this legislation we should equally be debating why this House does not fund adequately prevention programmes such as the Stop programme, aimed at ending sexual abuse. That is an essential co-requisite of this legislation if we are to achieve the end of the legislation, which is truly to protect individuals against the consequences of domestic violence in all its forms. By ignoring prevention, we are effectively allowing victims to be created, and created quite unnecessarily. No matter what we do after the event to patch up the consequences of that violence we cannot restore the situation to where it was before the person became a victim. That is why prevention is so important.

In the remaining time I want to address the key issue that was the issue in contention in the Committee stage. That issue was the question of how most properly to deal with those who have used domestic violence and who are also holders of a firearms licence and the owner of firearms. The legislation as reported back did strengthen the requirements on police. Indeed it made it a statutory requirement on the police to consider revocation of firearms licences. It also provided for a special condition to be placed in any protection order requiring the seizure of firearms.

A supplementary order paper introduced in the Minister's name, but before that in the name of my colleague the member for Hamilton East, went further by stating that it should be a standard condition of any protection order that the respondent surrender to the police any firearms licence or firearms possessed by the respondent. The respondent is subsequently able to seek the return of the licence and any guns surrendered from the court. But the paramount consideration will be that the court takes into account the need to protect the person for whose benefit the protection order applies. In other words the presumption is very clearly in favour of the victim. The court will take into account whether the person protected consents to the return of the licence and the arms, the nature and seriousness of the violence used, the ongoing risk of further violence, and the need for the respondent to have access to the weapons.

In the Committee, the majority by nearly two to one supported the supplementary order paper, as I did. I think that is a step in the right direction. I think that this legislation reinforces the message that violence is never acceptable, will not be tolerated, and in all respects will have serious consequences for the offender.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - ALEC NEILL**

ALEC NEILL (Waitaki): I rise to support the third reading of the Domestic Violence Bill. In doing so, I want to point out to the House that we received as a select committee, 65 submissions with regard to the legislation. In general there was support for the legislation, and it now passes through its third readings. I want to point out that this National Government will not condone, nor will it sanction, violence, particularly domestic violence. This legislation will assist those who are the victims of domestic violence and will provide a new era in which protection is available to people.

This legislation supersedes the Domestic Protection Act, and provides a new single order known as the domestic violence protection order. As a result of that order, the definitions have been substantially extended so that it not only includes a spouse or the children of a husband and wife relationship, but extends it to other relationships including single-sex relationships---homosexual relationships and lesbian relationships. It extends the order to include definitions, not only of physical and sexual violence but also of psychological abuse.

When the legislation came before the select committee, the submissions indicated concerns relating to the provision of counselling. Substantial changes have been made to ensure that those who provide counselling have the relevant qualifications to ensure that there is proper and adequate counselling. The concern is that as a result of that there needs to be adequate funding to provide the counselling.

Also included in the legislation is the need for enforcement of protection orders. It is essential that there be an effective enforcement ability to ensure that those who are in breach of the order are able to be brought to justice in the appropriate manner and that appropriate penalties are able to be imposed.

The select committee also considered in some detail the matters relating to firearm licences and the possible mandatory revocation of a firearm licence. This is excellent legislation and it is sad if in fact it is brought into some form of disrepute, solely because of differences of opinion between members of this House on the issue of firearms. It would be sad if we concentrated only on the issue of firearms when there are many excellent aspects to this legislation. I personally believe that we got it wrong in the Committee stage and that the imposition of mandatory removal of firearms will neither benefit the legislation nor those who are involved. But, as indicated by the previous speaker, it was voted on the basis of two to one in favour of mandatory removal of firearms, and I would not wish the legislation not to proceed on that issue alone.

There is no doubt that under section 60A of the Arms Act the police have adequate powers of seizure at the time of attending a domestic dispute. Not only that, they also have the ability under section 24 of the Arms Act for the removal of firearms in addition to

the provisions that were provided in the legislation as reported back to this House, where the judge on request in the application could have revoked a firearm licence. There is now mandatory removal of the licence. Notwithstanding that, it is important that this important legislation proceed through the House and become law to provide adequate protection for a large number of people.

This Government is not only prepared to introduce and pass the Domestic Violence Bill through all stages, but on the way to Wellington today I read with interest the new document called Breaking the Cycle under the Children and Young Persons Act. There is no doubt that under that Act there are new and adequate provisions with regard to violence as it relates to children. We intend to make our mark and stamp out to the best possible ability, the ongoing domestic violence that is occurring in this society.

I think it is important that we understand that this legislation moved from including just a husband and wife, or husband, wife, and child relationship, to including other persons, whether they are of the same or opposite gender. Further, the respondent has been extended not only to include the person against whom the application has been made for an order, but also to include others who are associated with the respondent. That goes substantially further than did the old Domestic Protection Act. Minors can apply to have an application for a protection order, and that is an important addition under this Act, which would not have been provided under the Domestic Protection Act.

The words *ex parte* are interesting. In the old days we were able to apply for an *ex parte* application. Those words have now been deleted. The words that were referred to in the Bill were ``an urgent application'', and that term has been replaced now by ``an application without notice''.

I think it is important that we understand the counselling provisions and the detail this legislation goes into to provide counselling for the applicant and for the respondent, who must comply with the terms of the Act and attend counselling. I have some concerns where persons have an order made against them where they wish to exercise their access and there is a need to have it as access with others in attendance. Those persons must pay for that attendance to occur. There will be occasions when people on low incomes who wish to have access to their children will not be able to do so, if in fact that requirement is imposed, based solely on the grounds that they do not have the funds to do so. There is no State funding for individuals to be provided with additional funding in order that there is supervised access.

I say to this House that we need to monitor carefully the situations that do arise. The interests of the children still remain paramount, and if a child is not able to see his or her mother or father solely on the grounds of lack of funding, where supervised access is required, then that would cause me some concern.

As I said earlier, I would hate this legislation to be reported solely as legislation that provides compulsory confiscation of guns and revocation of arms licences when in fact it goes far further than that, and in fact provides protection for a large number of New Zealanders, and that protection will provide them with greater security in their own homes.



*Hansard - Stage: THIRD READING - 12 DEC 1995*

DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings

Main speaker - DIANNE YATES

DIANNE YATES (Hamilton East): I wish to speak on the third readings of the Bills relating to domestic violence. It gives me a great deal of pleasure to see the domestic violence legislation through to its third reading. As I said in the Committee stage, the title of the original Bill is significant. It has changed from the Domestic Protection Act of 1982, in the production of which the Leader of the Opposition has said that she was pleased to be involved. Things have moved since then, attitudes have changed, and we have been agitating for the introduction of a domestic violence bill for a number of years.

The legislation is about domestic violence, and it defines violence very carefully. It is not just a matter of whether a man beats up on his wife, but it is about all violence towards family and household members---physical violence, sexual violence, and also psychological violence including intimidation and harassment. It is about revising and tightening up the old non-molestation and old non-violence orders, which now become protection orders. Hopefully, more families, more women and children in particular---because they make up the majority of the cases---will be safe and less likely to live in fear.

I think it is particularly important that this is one of the last pieces of legislation to be passed through the House before Christmas, which is a time for families and when domestic violence is on the increase. We bring it through in the hope that things will be better in the future.

I want to say a number of ``thank yous'' at this time. I want to thank my colleagues on the select committee, who bore with my stubbornness on a number of issues. I want to thank my Labour women colleagues for their support, and I want to thank my caucus colleagues, especially for their vote on the firearms amendment. I want to thank the Ministry of Justice staff who drafted and redrafted many clauses. I want to thank the Ministry of Women's Affairs staff, particularly for their theoretical knowledge of the issues involved, and the experience that they brought to the legislation. I want to thank those who helped with the drafting of the legislation. I want to thank all those who made submissions, in particular the National Council of Women, the YWCA, the Women's Refuge movement, the Women's Electoral Lobby, Men for Non Violence, and the Commissioner for Children.

I want to thank---as the member for Hamilton East---those who appeared before the select committee when it met in Hamilton. I particularly thank those from the Hamilton Abuse Intervention Project who provided many of the statistics that have been used in arguments for this legislation, and for their heartfelt and hands-on experience. I know ``hands-on'' is a difficult word to use in relation to domestic violence, but I thank them for their very close association with people who are involved and who are victims of domestic violence. I want to thank also in particular the Hamilton police, who have led the way in the police in the application of law and in what we now call, thankfully, the Not Just a Domestic policy.

I thank the researchers from the University of Waikato who did the original research on non-molestation orders for the Victims Task Force: Ruth Busch, Hilary Lapsley, and Neville Robertson. I also thank the Ministry of Justice researchers who did the very extensive research called Hitting Home, about the attitudes of people towards violence in New Zealand.

Lastly, I want to thank the victims---those especially brave people such as Christine Bristol, and all those who share the circumstances surrounding the tragic death of her children. I thank

her for her bravery in addressing the select committee on this.

In my maiden speech in 1994 I asked how many people have to be killed, how many women and children have to die before we stop writing and rewriting reports, and before we pass legislation that will prevent domestic violence. I asked how long we had to wait.

I also thank my Labour women colleagues who, in September 1994, led the general debate on domestic violence in which we particularly harassed the Minister of Justice. There was no legislation at that stage, and he promised legislation by the end of the year. We brought barometers into the House to measure the progress on that legislation. There were 101 recommendations in the domestic violence report that went to the Victims Task Force. I have had one of those barometers hanging outside my electorate office every day. Tonight I hope to be able to take that barometer down.

I thank the Minister for introducing this legislation, and for the fact that tonight we may pass this very important legislation, which is important for families in New Zealand. It is also a particular triumph; not only did I mention this in my maiden speech, but the legislation was originally introduced on 29 November, which is a day I will not forget because it happens to be my birthday. So it is a day that I will remember---less than 2 years after my maiden speech this particular legislation has come into the House. Once again I thank the Hamilton researchers, the police, and the members of the Hamilton Abuse Intervention Project.

I want also to mention controversial matters in this legislation, and say that there are 111 clauses. I regret in many ways the amount of attention that has been given to the firearms clause, because it does occur to me, as mentioned by the member for Waitaki in his speech, that we are concerned about protection for families, for people within families, for women and children. I regret that there were not more submissions about the difficulties of people having access to their children, and I regret that there was not more agitation about the amount of resources being given to people to have access to their children rather than to the matter of firearms.

I will say that, as has been mentioned by the member for Roskill, it has become clear to me that when one applies for a firearm licence, one's partner, and one's family have to be interviewed to see whether the applicant is a fit and proper person to have a firearm. It does seem logical to me that if a person should become not a fit and proper person to have a firearm because a protection order has been taken out, it should be automatic, as in the legislation, that it is a standing provision that that person should lose their firearms and their firearms licence. I do not see any problems in that.

It does not mean that a person may lose their firearms for ever, but the onus will have moved from the victim, from the person who is under the protection order, to the people who have the firearms to prove that they are a fit and proper person. It does mean that the interests of the victim are paramount. I thank the Minister of Women's Affairs for saying in the Committee that if we save one life by this particular clause then it has been worth it.

I also want to mention the controversy about access by partners to their children. I was disappointed that there was not more agitation about the fact that it may be a costly business for some people to have access to their children. I do hope that the Minister in his allocation of \$9 million to the implementation of the legislation will allocate some money in that direction, because resources are particularly important.

I would mention once again the Hamilton Abuse Intervention Project, and say to the Minister of Justice---as we did in the Committee stage---that I have written to him and have lodged written questions in the House to the Minister of Justice and the Minister of Social Welfare about the problems that are incurred in resources, in particular relating to programmes, to intervention, and to monitoring

what is happening across the board in terms of domestic violence. I have had no assurance from either the Minister of Justice or the Minister of Social Welfare that there is a structure in place that will prevent people from falling between the gaps. Once again, I do ask the Minister to reconsider his decision on pulling funding from the Hamilton Abuse Intervention Project, and ask that he consider having these programmes repeated throughout the country.

Once again I would say a particular ``thank you'' to those victims who have given us their stories, who have been prepared to participate through the Victims Task Force report and in making their submissions to the select committee. I thank Christine Bristol, who had said to me that one of the best Christmas presents she could have this year would be the passage of this legislation.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - Hon. KATHERINE O'REGAN**

Hon. KATHERINE O'REGAN (Associate Minister of Women's Affairs): I am delighted to be involved in the third readings of the domestic violence legislation. Unfortunately I was not able to be present during the Committee stage last week, but I am delighted with the results that came from that. This legislation is among the most important that this Government has introduced and passed in this session. I am delighted and proud to be part of a Government that has seen this legislation through to this point, and I am delighted with the changes that have been implemented.

I wish to congratulate the Minister of Justice on his forbearance, particularly, with regard to some of the issues that did create some heat and possibly very little light at times---particularly the issue of firearms. But I think the important thing to remember is that this legislation changes the whole area of domestic violence prevention and protection. This legislation is about prevention and protection. In fact we have changed clause 5 of the Domestic Violence Bill to make clear that the object is actually to prevent violence in domestic relationships. I think that is a very important point to make.

Obviously this legislation has a much wider application once it becomes implemented than just the domestic scene as regards a man and a woman and children. It has now been broadened to include other family members. I would like to point out here that much has been said about elder abuse in recent times. In fact this legislation will now ensure that elderly people no longer have to put up with or suffer from abuse, be it psychological abuse, including harassment, or be it from carers or family members, for that matter, who are looking after them. So I think it is very important that groups like Age Concern and others do realise that this legislation will provide great results for them in the future when they deal with issues of elder abuse, because it does expand the meaning of a domestic relationship, as previous speakers have spoken of.

I had a case in my electorate office of a complaint from a family. The grandmother was being harassed by the granddaughter to part with rather large sums of money to feed a drug habit. There seemed to be nothing the family could do to prevent this from happening. Under this legislation I think a grandmother in that circumstance could be convinced to take out a domestic protection order.

The other issue that I think is very important, and which has been

mentioned here several times, is the meaning of ``domestic violence'', and how much it also has been broadened, particularly to include the threat of physical violence, intimidation, and harassment. Those are the things that undermine people. They undermine the women and the children who live in violent relationships. I am very pleased that we have expanded the legislation to include those things. We know that domestic violence damages observers, and these are invariably the children.

We also know that domestic violence degrades the perpetrator. I am glad that this legislation will see programmes put in place to ensure that we can actually deal with domestic violence. I am very delighted to know that the Men for Non Violence organisation and others are involved at the very moment in discussing these matters and how we deliver such services in the future.

We know that domestic violence humiliates. We also know that it breeds further domestic violence, that it is intergenerational and continues down through time. Generations of families are damaged by it. So I am delighted that the select committee has brought back this legislation, and that it has gone through the Committee stage. I am very pleased that the changes that have occurred certainly improve the legislation.

I would like to talk about one particular area, because it is an area that I was involved in---although listeners may think that only Labour women were involved in it. That area is the improvement of the position in relation to firearms, and the provision to revoke a firearms licence if a domestic protection order is sought. The select committee did a very good job, I believe, in bringing this Bill back in the shape that it did, but it did not quite go far enough and actually place the burden of responsibility where I believe it now lies---under this legislation as it has emerged from the Committee stage---and that is with the law, not with the woman who is having to seek an exemption, if one likes, or a special condition with regard to a protection order. It is now a standard condition that if a licence holder is the respondent, that licence is automatically revoked and removal of the gun is undertaken.

I know that some concerns have been expressed about that, but I am delighted because I have been working on it behind the scenes for some time to ensure that it actually eventuated. I am also delighted with my colleague the member for Eden, who has been working alongside me on it. I congratulate the House. As I say, I was not here last week when the debate was held on this issue, but I congratulate the House on seeing the sense in approving the amendments promoted by the Minister of Justice. I am delighted that they have gone through.

It is well known, certainly in the women's refuge movement, that over half the children who are received into care have had direct physical abuse, and, of those, 23 percent have been threatened with guns. I think that is the whole point of this amendment: it is about not homicide so much but the threatening and the intimidation that occur. Hopefully, we will now see those diminish.

The other thing that I suppose this legislation can do is place some responsibility on gun owners. If a gun owner threatens somebody with a gun, and that person takes a domestic protection order against the gun owner, then the gun owner will actually lose his or her licence and his or her gun. Owning a gun is a privilege. Obviously, that person must be a fit and proper person to own a gun in the first place. Hopefully, in future we will see women and family members in much safer circumstances.

There are some people who should be thanked for the work they have done over the years. I know that the women's movement generally has been seeking major change in this area. In fact, the first domestic protection legislation was landmark legislation on its own. I am delighted to say that this legislation, to be enacted under a National Government, has certainly extended it. But thanks to the women's movement generally for its constant reminders to successive

Governments actually to move on this particular issue, and to the victims who have suffered at the hands of violent partners. They too need to be remembered when we speak on this legislation.

Thank you to Ruth Busch and Neville Robertson, two of the authors of the Victims Task Force report, and to Hilary Lapsley. Thank you to all the officials from the New Zealand Police and the Department of Justice, and a special thank you to my Ministry of Women's Affairs people who also gave advice throughout this. Thank you to Shona Jones and, in particular, Joy Liddicoat from the ministry.

I am delighted to be a part of a Government that has seen this legislation go through. This is very good legislation for the women and families of New Zealand.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - JILL PETTIS**

JILL PETTIS (Wanganui): I think we are all pleased this afternoon to be speaking to the third reading of the domestic violence legislation. This is extremely important legislation. I want to endorse the thanks given earlier this afternoon by my colleague the member for Hamilton East and by the Associate Minister of Women's Affairs. I endorse all the gratitude that they showed to so many people.

I particularly want to thank my colleague the member for Hamilton East for the huge amount of work she has done on this issue. She has been tenacious, and her tenacity has been rewarded. A Bill like this does need somebody to drive it through, and the member for Hamilton East has been that driver. We thank her for her constant battling and for the constant support that she has given to lots of other people in order to get this Bill through. I also thank the Minister for the assistance that he has given, because he too has played an important role.

This Bill was proposed by Labour, and was supported by the Labour women's caucus and a number of community groups. Many of those community groups have been mentioned by previous speakers.

Sure, the firearms amendment part of the legislation has created a bit of a furore, and has perhaps sometimes taken precedence over other important aspects of the legislation. It is important, but, overall, the passage of that particular amendment is a victory, and we have managed to convince other parties that the seizure of weapons should be mandatory not discretionary, with the onus of proof on the respondent not the victim, who, quite frankly, has enough to cope with. The aim is to minimise the potential for violence, both actual and perceived. The perception of violence is something not always understood by everyone. A gun does not have to be used for it to be threatening. Just knowing that it is there, present in the home, may be enough to inhibit behaviour.

Some detractors have tried to paint this issue as a male versus female issue. It most certainly is not. The paramount consideration is to protect the persons for whose benefit the protection order applies from further domestic violence. In fact the availability of firearms probably advantages women more than men, because it is far

harder for a woman to damage a male seriously with her mere fists. That is an ugly thing to have to consider, but in fact it is reality.

This is not seen by everyone as a male versus female issue. I know of men who own firearms---they are recreational shooters---who state publicly that any man who beats his wife should lose his firearm and his licence. I applaud those men, rural men, for coming out and making statements like that.

Rural women are sometimes forgotten in the equation of domestic violence, because for some reason or other---I cannot quite understand this---domestic violence is sometimes seen as just an urban problem. It is portrayed on television as an urban issue, but, as the women of New Zealand know, it most certainly is not. Violence is not confined to the urban areas. Rural women are frequently exposed to firearms due to the nature of their partners' occupation. Rural women are also under considerable threat because they are isolated, not only geographically but from the structures that support women. That is especially so at night, when, unfortunately, some of the most violent incidents occur. It is a long, long way for a woman to drive from her isolated home in the country to a refuge or police station in town.

This legislation is about many things. It is primarily about saving lives. Last year there were 54 incidents of domestic violence where firearms were used. That is 54 incidents too many. It will be a standard condition to suspend a firearms licence when a temporary protection is granted, and to revoke it when a final order is made, and we welcome that.

This legislation is also about saving lives. We do not see reducing the number of road deaths as a gender issue; we do not see that as a male versus female issue. Rules for travelling on the road are made arbitrarily. Those rules apply across the board, and we endorse those rules because they too are about saving lives.

I will touch briefly on an aspect of this legislation that is important to me and lots of other women. This legislation is about reducing fear. How does one determine what fear is? Fear can be many things to many people. I believe that women are more fearful than men. How many men, when they go home to their home alone, look under the bed? I do, and I am old. I still look under the bed. It is the habit of a lifetime. Thank goodness at home we have a water-bed, so there is nowhere to look, but generally my husband is there to protect me. But I go home alone from here each night, and the habits of a lifetime are hard to undo. I still do that, and I wonder how many of my male colleagues do that.

Fear is something that can strike a person right to the core. I know that what I have said is quite humorous, and that I have revealed a little foible, but this legislation is about removing and reducing fear. As a mother, I know that mothers will do almost anything to protect their children. Unfortunately, that very protective characteristic that we have as mothers can also sometimes make us make mistakes. One of the most harrowing books I have read on this issue is called When Battered Women Kill. Sometimes battered women do kill. I welcome this legislation because I do not want any woman to be placed in a position where she has to fatally wound her partner.

Another important aspect of this legislation is about custody issues. In custody proceedings, if it is alleged that a party involved in the proceedings has ever used violence against that child or other children, the court must determine whether the allegation is correct. If the allegation is correct the violent party will not be eligible for custody, and will be eligible only for visiting rights under supervision, unless the court is satisfied that the child will be safe. I welcome this amendment, because it too will provide safety for a very, very vulnerable group.

In closing, I too want to acknowledge that Christine Bristol is in the precincts of the House. This legislation is of special importance

to Christine and many, many other women. On behalf of the Labour caucus I send Christine Bristol much love and our continued support, and we acknowledge her tremendous bravery.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - CHRIS FLETCHER**

CHRIS FLETCHER (Eden): It is my pleasure to follow the member for Wanganui and to support the observations she has made. Yes, I do look under the bed, in the cupboard, and behind the door when I go home at night. I wonder how often over the last 15 years we have looked at the television news at night, have seen a child beaten up or maybe killed, or a mother beaten, and have recoiled with horror. We think how dreadful it is, but somehow the next night there is something that might arguably be equally as awful, so it is forgotten. We wonder how these things could be happening in our country.

Today we are doing something about the problem. We are doing something about the different types of abuse in relation to domestic violence---the isolation, the emotional abuse, the economic abuse, and the physical abuse. Hopefully, we are doing a lot to empower women today through this legislation.

This legislation did not happen just because of one party or the other. It has happened just as much because the Alliance has supported it, the United New Zealand Party has supported it, the Labour Party has supported it, and the Government has been there to facilitate it.

Lots and lots of people should be thanked. I thank the Minister and the Associate Minister of Women's Affairs within our caucus. They have brought about great advocacy. I thank the Prime Minister, who was prepared to make time to have this issue debated in our caucus. The Minister of Justice introduced the legislation. Others have been mentioned, such as the Women's Refuge, in Auckland the Coalition Beyond Violence, Philip Alpers, and Dame Augusta Wallace.

So many people have brought about this legislation, and so many people, for such a long time, have wanted the issue of intergenerational violence finally addressed. Well, it is happening today, and the fact that we are at the point of a third reading on these Bills gives me a huge amount of pleasure. It is good news for the women and the families around New Zealand. It has happened through the advocacy of so very many people. It has crossed party political boundaries, so it gives me a lot of pleasure.

The legislation has also been, in part, a response to the United Nations Declaration on the Elimination of Violence Against Women, and the United Nations Convention on the Rights of the Child, to which we are committed. This legislation will help to ratify the commitments and the declarations that we have made. I congratulate all those people---including members of the select committee, who tried so hard to make the legislation work, and to improve it in the time it spent in the committee.

General criminal law has not allowed the victims of domestic violence in New Zealand to feel safe. I hope that these Bills, when

enacted, will remove the fear felt by so many victims, most of whom are women. But more important, I hope the legislation will send a strong message to New Zealanders that violence is not a solution to problems within personal relationships. Violence in a domestic setting will now be taken extremely seriously by the authorities, and those who commit violence can expect to be dealt with very severely. Homes will be safer places in which to be, in the future.

This legislation takes the non-molestation and the non-violence orders from the Domestic Protection Act of 1982 and combines them into a single protection order that can last indefinitely. This protection order is available to a much wider range of people living in close relationships, including children, who will be allowed to apply for orders in their own right. It does not apply to unmarried people below the age of 17 years, because they are already protected under the Children, Young Persons, and Their Families Act.

The legislation also recognises that abuse can take many different forms. It recognises psychological abuse, and I draw the attention of the House to clause 3 of the Domestic Violence Bill, and the issues relating to that clause, including recognising patterns of behaviour.

This legislation contains many new provisions for better protection for women. The Bill also allows for better living conditions for the victims of domestic violence. It addresses issues in a practical way. There is now greater scope for protection orders, which I have already addressed, and much stronger enforcement of those protection orders. There is also a provision that gives powers of arrest to the police in cases of a breach of a protection order. And when the police have good cause to suspect that an order may be breached, they can make an arrest without first having to obtain a warrant. The police have to observe some sensible guidelines in these cases, but at least they have some form of discretion, and that is a good thing.

The legislation also provides for counselling. People who have a protection order against them now have to undertake mandatory counselling. Only a few minor exemptions will be allowed---for example, in cases where an appropriate counselling programme may not be available. That is a really progressive step.

I do not think that very many people start off in life with the sole intention of being evil. Maybe this form of practical intervention applied at this point in those people's lives, by way of counselling, will put them on a new road and, hopefully, help them to move towards better relationships in the future.

The legislation contains amendments to the Guardianship Act that I think will bring about a much safer environment for children. All in all, I believe it is very, very good legislation.

No doubt additional costs will be incurred by the police in the process of complying with this legislation, and I am very pleased with the steps the Government has taken to make sure that funding is available. However, domestic violence has affected us all in one way or another for too long. The passing of this legislation is a real step towards what I hope will be a much more gentle society.

I will take just a few more minutes to speak on what is perhaps the only controversial issue remaining in the legislation, and that is the decision of the House in the Committee stage last week to address the issue of firearms in the case of a protection order being placed. I strongly support this move. I have had a lot of lobbying since then from people who have rung me and said quite hysterically: ``I will have my firearm taken away from me and this is just a terrible thing.'' I calm them by explaining that confiscation of firearms will take place only when it can be demonstrated that a protection order is required. In the case of a woman who has been beaten up, why should the partner be allowed to maintain his firearm? More important, why should she have to be the one to make the decision as to whether the firearm should be taken away from him? The seizure of firearms should be blamed on the law, and not on the woman



Shifting that issue will enhance very much the environment for the woman involved, otherwise she could well come under pressure from her family, her in-laws, or her friends, all of whom might think her partner is a great bloke, and who might say that they could not possibly believe he would do such a thing. The shifting of that responsibility to the police automatically removes from the woman the guilt of making a decision; the law can now be blamed, not the woman. That has to make for a far better situation all round.

It seems quite sensible to me that people who have firearms---and it is a privilege to hold a firearm---should have to demonstrate that they are fit and proper people. For the life of me I cannot believe that somebody who can beat up his wife, resulting in a protection order being put in place, is indeed a fit and proper person.

In conclusion, I think this legislation is a real step forward for New Zealand society generally today. It demonstrates a maturity in the House that we can debate Bills of this sort across the House, and I give credit to all concerned for what is very sensible legislation. Certainly I think it is the most important legislation that will be passed this year. I thank all concerned---most importantly, the chairman of the select committee, who committed so much time to making sure the legislation was workable---and I thank the House for the opportunity.

*Hansard - Stage: THIRD READING - 12 DEC 1995*  
**DOMESTIC VIOLENCE BILL; AND BILLS THEREFROM : Third Readings**  
**Main speaker - JUDITH TIZARD**

JUDITH TIZARD (Panmure): I am very pleased to be speaking on the third readings of these Bills. It is 1 year and 11 days since this legislation was introduced in the House. It has been the object of the Opposition all through the process to make sure that the legislation was returned in the best possible form and in the quickest possible time, because it is well past its time. It has been necessary for many years now, and I believe that it will make a difference to people in New Zealand.

Looking back over my speeches in the 5 years I have been in Parliament, I find that I have spoken on this issue more often than I have on any other. We Labour women members have seen this as one of the highest priorities of our work in Opposition---that is, trying to encourage the Government to take action on behalf of New Zealanders.

We believe that the prevention of violence is the first responsibility of the Government. Education is required to deal with violence. Assistance is necessary for the victims of violence. Legislation is required to protect those victims. Punishment is required for offenders, but also programmes in prisons and in the community to prevent violence are required. It is the cycle of violence that we are concerned about, and the prevention of it.

A number of reports have led to this legislation. In 1987 there was the Roper report. In 1992 the Victims Task Force, which had been set up by the last Labour Government, issued its report entitled Protection from Family Violence. The Davison report followed the

appalling case of the violence that caused the death of members of the Bristol family. Suzanne Snively's report in 1994 on the economic cost of family violence in New Zealand stated that in economic terms alone, violence was costing this country \$1.2 billion a year. During the course of the consideration of this legislation, a report entitled *Hitting Home: Men Speak About Abuse of Women Partners* was commissioned by the Department of Justice. This report stated that the vast majority of New Zealanders saw violence not only as normal but as an acceptable way of dealing with disputes or betrayal within relationships.

This legislation follows on from those reports, but it is also following the general framework of the Domestic Protection Act. I particularly want to pay tribute to my colleagues the member for Southern Maori and the Leader of the Opposition, who played a major part in that legislation. For a long time women have thought that that legislation needed to be updated and expanded. These Bills do that.

The Domestic Protection Act did much more than had been done in the past. It provided protection from violence to people who were in recognised, marital-style relationships. When they were able to get to the court, they were able to get a non-molestation order. However, the report of the Victims Task Force pointed out very clearly that the follow-up was not there and the prevention was not there.

In spite of the protections of that Act, we found that social attitudes had changed only very slowly. As I have already said, the report entitled *Hitting Home: Men Speak About Abuse of Women Partners* hit home very hard, I think, with members of the select committee, other members of Parliament, and the community who read it.

I am appalled by the number of New Zealanders who see violence as normal, and who see it as their right to hit people who are less powerful than they are, as a way of disciplining them and forcing them to conform with their expectations or their needs. I think that until New Zealanders take violence seriously, we will not make much progress in spite of this Bill. Many New Zealanders see violence not only as normal, but as acceptable, and that must change.

The 65 submissions that came before the select committee all agreed with that---no, there were one or two that did not agree. Those submissions came from people who believe that hitting---particularly children, but in some cases wives---was acceptable. I think the two submissions that I recall were heard in stunned silence. But most submissions were thoughtful, careful, not emotive, and described the reality of the lives of many New Zealand families. They talked about what it is like to live with violence, what it is like to be brought up with violence, and what it is like to marry into violence, and to accept it throughout one's life. Some submissioners talked about what it is like to be old and powerless, but many of them talked about what it is like to be young and powerless, or female and powerless.

I thank all the people who made submissions. This legislation is much better than it was when it was introduced a year ago, because of the work of those people. I particularly thank the people who were involved with the Hamilton Abuse Intervention Project. I wish them well. I hope this Government will take the funding issues as seriously as it says it is taking the policy issues.

I thank Ruth Busch, Hilary Lapsley, and Neville Robertson. I also thank all the people who have worked with them, and all the people who have worked in those programmes. I thank the members of the Victims Task Force---an organisation that I believe has made a remarkable difference to attitudes in this country; an organisation whose work will continue to be heard again and again and again. I thank all the people who work in the Women's Refuge movement, Rape Crisis, the Help Foundation, the National Council of Women of New Zealand, and the Young Women's Christian Association. I thank the people who work in Men for Non Violence New Zealand. In particular, I

thank the thousands of individual men and women throughout New Zealand who have made a personal decision not to live with violence any more. I thank the select committee staff who made an invaluable contribution to this legislation.

I thought it was a most interesting experience watching the departmental staff---the very good staff of the Department of Justice, which became the Ministry of Justice part way through this Bill, the Ministry of Women's Affairs staff, and the police---who were prepared to argue the issues very fully in front of the select committee, and who allowed us to argue the issues very fully and very freely with them. I think it was the select committee process at its best.

But I do want to say that one of the problems the select committee had---and it was referred to in the Committee stage---was that because of the Government majority, and because certain decisions had been made---the chairman reported back a number of times that the Government view was such and such---we were not able, or we did not think it worth while, to pursue some of the issues that this House has chosen to remedy.

I do not want to dwell on those firearms issues for too long, but I do think that the House has made a sensible, rational, and decent decision. All those people who told the select committee that they feared firearms can now hope for some protection.

The objective of this legislation is to provide protection for New Zealanders within their families. The family is the place where we assume that we are safe. It is the place where we have the right to assume that we are safe. I think that in New Zealand we are discussing more and more frankly the fact that many of us are not safe within our families. This legislation sets basic standards for how families should behave. It states what is utterly unacceptable and what should be done.

There are issues that this legislation does not cover. There was particular concern at the select committee and in the community about the fact that educational programmes to stop violence are not provided for within this legislation, and I plead with the Government to fund and to organise these programmes. I do not want to see any more Pacific Island women's refuges in west Auckland being closed. I do not want to see any more Stop programmes being closed. These are the programmes that will make families safer in their homes.

This legislation does not deal well enough with programmes for children, and it does not deal with the issue of stalking. There are many more matters that this House will want to go on with.

I will finish with a quotation from the preface of the Protection from Family Violence report by the Victims Task Force. At the end of that preface the authors stated: ``To the women we interviewed who told their stories and who have been silenced long enough. To the women who have been hidden and who have come out of hiding to tell their stories. To the women who have gone back into hiding and who are still there now. To the women who have paid to tell their stories in ways they should not have had to; who have paid with their bodies and their pain. To the women who might still pay when it is known that they have told their stories. To the silent children listening to their mothers' stories---those children who have learnt to be silent to survive and whose stories are yet to be told. To the women who have died---one woman nearly every week. To the women who died as we worked on this report and whose stories we pieced together from police files, coroners' reports, and from their families. The days of your deaths were marked by the system's trivialisation of the dangers you faced.''

This legislation says that Parliament no longer trivialises that pain.

Bills read a third time.

Sitting suspended from 5.30 p.m. to  
7.30 p.m.

[The Speaker, having raised the question that a quorum was not present and the bell having been rung, declared that a quorum was present.]

*Hansard - Stage: INTRODUCTION - 12 DEC 1995*  
**CHEMICAL WEAPONS (PROHIBITION) BILL : Introduction**  
Main speaker - Rt Hon. DON McKINNON

CHEMICAL WEAPONS (PROHIBITION) BILL  
Introduction

Rt Hon. DON McKINNON (Minister of Foreign Affairs and Trade): I move, That the Chemical Weapons (Prohibition) Bill be introduced. At the end of this debate I will be moving that it be referred to the Foreign Affairs and Defence Committee for the obvious transmission through that. This Bill may frighten some in the first instance in that it is a rather voluminous one but there are, I can say, 12 pages of Bill and then 106 pages of United Nations convention attached to it. But it is really the 12 pages that the House is interested in now, even though the convention itself is something that members would wish to address themselves to, especially the select committee, because the purpose of the Bill will enable New Zealand to give effect to the United Nations Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. Once the Bill is passed, of course, New Zealand will therefore be able to ratify the convention.

This convention, in effect, represents a milestone in global disarmament efforts. Adopted in 1993 it completely bans a whole category of weapons of mass destruction. But unlike the biological weapons convention of 1972 it includes comprehensive mechanisms to verify compliance with its prohibitions.

Chemical weapons exist in large quantities. The convention provides for their elimination and contains wide-ranging and intrusive verification provisions of unprecedented scope aimed at ensuring these weapons are never manufactured again. The chemical weapons convention is the product of some 20 years of negotiations in the United Nations Conference on Disarmament and it was signed on New Zealand's behalf in January 1993 by my colleague the Minister for Disarmament and Arms Control. To date it has been signed by some 160 countries and ratified by 44. When it is ratified by 65 countries it will come into force.

Although some countries are thought to be waiting for the two major countries that possess chemical weapons---the United States and Russia---to ratify the convention, the rate of ratifications is picking up and there are good prospects of the convention entering into force next year. Obviously New Zealand can therefore play its part in helping to bring that about.

I guess everyone would know about the horrors of chemical warfare. We have seen all the images of poison gas used on the battlefields of World War I. In that war, 100,000,000 kilograms of chemicals were used---mainly chlorine, phosgene, and mustard gas. Chemical weapons killed 100,000 people in that war and injured another 1,000,000 or

so. But even the survivors---and even until probably the last 20 years there were such survivors---continued to endure after-effects of the use of such chemicals, suffering blindness, tuberculosis, lung cancer, and bronchitis.

Despite evidence from this war of the inherent cruelty and mass destructive effect of chemical weapons, even more lethal weapons, particularly the nerve gases, were developed, and chemical weapons kept being used. Japan used them against China between 1937 and 1945. Hitler, of course, gassed millions of Jews in his concentration camps and, more recently, Iraq used chemical weapons against Kurdish civilians. Again, we all recall the images of the civilians who were slaughtered by chemical weapons in the Kurdish town of Halabja in 1988. And even as recently as this year the terrorist bombing of the Tokyo underground reminded us that the use of chemical weapons is not confined to situations of armed conflict and that urban centres are vulnerable to attack. These weapons can be readily manufactured and spread. It is not surprising, therefore, that chemical weapons have been described as a poor country's nuclear weapon.

New Zealand does not produce or stockpile chemical weapons, but many of the chemicals of interest under the convention also have a legitimate civilian application. However, we have only a modest chemical industry in this country and there will not be any major implications for that industry in this Bill. Last year the Ministry of Foreign Affairs and Trade contacted and surveyed 127 relevant companies and other organisations to let them know what would be involved in the ratification of the convention. The results of the survey indicated that only three companies held some minute quantities of the chemicals of greatest concern and 11 companies held small quantities of other chemicals. None of these chemicals are actually produced here in New Zealand.

The important point is that this Bill, and New Zealand's ratification of the convention, will mark our commitment to the enhancement of international security the convention will bring when it enters into force. We have kept our legislation as simple as possible because we really want the convention---that is, the document of some 106 pages attached to the Bill---to speak for itself.

The Bill makes it an offence to develop, produce, otherwise acquire, stockpile, retain, transfer, or use chemical weapons. Such offences extend, as the convention requires, to acts or omissions by New Zealanders overseas. It will also be an offence to manufacture, use, or trade certain chemicals listed in the convention without the consent of the Secretary of Foreign Affairs and Trade. The convention will require New Zealand to make annual declarations about the production and use of the specified chemicals to the Organisation for the Prohibition of Chemical Weapons, a permanent body to be established in The Hague under the convention. To facilitate such reports, the Bill requires those involved with such chemicals to furnish appropriate information to the Secretary of Foreign Affairs and Trade.

The organisation will include a technical secretariat with international inspectors charged with carrying out routine and random on-site monitoring and inspection of relevant chemical facilities.

Pete Hodgson: What will be the cost for us?

Rt Hon. DON MCKINNON: It has not been assessed yet but it mentions that probably a couple of people will be able to handle most of this required work.

The Bill contains provisions, including enforcement powers, to ensure co-operation with international inspectors carrying out their functions in New Zealand. Broad regulation-making powers are also included to help ensure that New Zealand can comply with its verification obligations under the convention. Intrusive verification measures are essential for building confidence in the convention itself. There cannot, therefore, be any cheats. As mentioned earlier,

this comprehensive verification breaks new ground in global disarmament and arms control treaties.

Engendering confidence and encouraging participation in the convention is also at the heart of the confidentiality provisions of the convention, which will protect information gained in the course of data collection and inspections---particularly commercially sensitive information---from improper disclosure. The co-operation of the chemical industry will be important if the convention is to succeed in meeting its objectives. A clause has accordingly been included in the Bill, pursuant to the confidentiality provisions of the convention. This will be an important provision for the select committee to scrutinise, because of that very factor. It has been considered necessary and desirable to include the convention as a schedule to the Bill. It is, however, a very long and complex treaty.

This year, New Zealand has twice gone to the International Court of Justice in connection with the testing and use of nuclear weapons. Today it is no less gratifying to know that in the case of another weapon of mass destruction---chemical weapons---New Zealand is again playing its part in the international disarmament and arms control process. We hope that, with the success of the chemical weapons convention, the international community will redouble its efforts to ensure that the remaining weapons of mass destruction---nuclear weapons---can also be eliminated ultimately by a treaty similar to the one we are addressing ourselves to at the present time. I commend this Bill to the House.

## ***Public Complaints about familycaught performance***

Logic might be dangerous.....

A man and his wife were getting a divorce at a local court. But the Custody of their children posed a problem. The mother jumped to her feet and protested to the judge that since she had brought the children into this world, she should retain custody of them.

The man also wanted custody of his children. The judge asked for his side of the story too.

After a long moment of silence, the man rose from his chair and replied:  
"Judge, when I put a dollar into a vending machine, and a Pepsi comes out, does the Pepsi belong to me or to the machine?"

Don't laugh, the man won!

## Controversy follows coin flip by judge

February 4, 2002, 10:04 AM

TRENTON, Mich. (AP) -- A Family Court judge is being criticized for flipping a coin to decide where children of a broken marriage would spend Christmas Day.

Norman Bresinski, of Trenton is the children's grandfather. He is threatening to file a judicial misconduct complaint against Wayne County Circuit Judge Helen Brown for flipping the coin at a Dec. 14 court hearing.

The coin toss determined that Bresinski's granddaughters would spend Christmas with their father.

"In 22 years of being in local, state and federal courts, I've never seen anything like this," said Bresinski, a former police sergeant who is now a plumbing contractor. "She made a mockery of the judicial process."

Brown, 53, a \$139,919-a-year Family Court division judge, wouldn't discuss the incident. But her boss said she was wrong.

"Tossing a coin to resolve a parenting time dispute is unacceptable," Wayne County Circuit Co-Chief Judge Mary Beth Kelly told the Detroit Free Press for a Monday story. She said it displays a lack of sensitivity for the seriousness of the process.

Detroit lawyer Philip Colista, former chairman of the Michigan Judicial Tenure Commission, said the coin flip violated Michigan court rules. He said judges are supposed to decide issues based on the law, the facts and the best interest of the children -- not by chance.

According to Bresinski and the lawyers who witnessed the toss, Bresinski's daughter, Elizabeth, and her former husband, David Bousquette, divorced last February after nine years of marriage. A judge gave her custody of their daughters, and her ex-husband received parenting time.

When she moved to Arizona to accept a new job, she took the children with her. After Bousquette objected, she returned the girls, ages 6 and 7, to Michigan to live with her parents, Bresinski and his wife, Deborah.

Bousquette then went to court to obtain custody of his daughters. A Friend of the Court referee recommended that Bousquette get custody of the girls if he bought a house and switched to the day shift at Rouge Steel, where he works as a materials handler.

When Bousquette fulfilled the conditions and told the Bresinskis that he would be taking custody of his daughters, the grandparents filed an emergency motion to stop him until the court conducted a hearing to verify that he fulfilled the conditions.

Brown decided at a court hearing Dec. 14 that the grandparents lacked legal standing to contest custody and said Bousquette could have his daughters after a series of daily transitional visits. Still, the judge was willing to consider the grandparents' wishes on where the girls should spend Christmas.

Bresinski said he and Bousquette couldn't agree on where the children would spend the holiday. So Brown pulled out a coin, flipped it and told them to call heads or tails.

Bresinski said he protested, saying he didn't want to decide the issue with a coin flip.

But Bousquette called heads and won the toss.

Bousquette's lawyer, Ronald D'Avanzo of Southgate, said the judge wasn't legally obliged to give the Bresinskis any consideration. Besides, he said, the girls spent the previous Christmas with their mother, and it was Bousquette's turn.

"I think the judge was trying to get them to work it out," D'Avanzo said. "I don't think she did it in any way to abrogate her decision making."

The Bresinskis' lawyer, Gary Gardner of Dearborn, mostly agreed but conceded that the coin flip was a problem.

"It's not the way I would have handled it," he said.



## Fathers perspectives presented by Rex McCann to Family Court 2002

Family Court Seminar - At least two Parents

A one-day seminar for the Family Court community attended by 900 Family Court workers from Auckland, Wellington and Christchurch August 5 - 9 2002.

Panel: New Zealand client perspective on the family court

Good morning. I am here today to bring forward a fathers' perspective on the Family Court on behalf of children. In speaking about fathers and men's perspectives these days there is a danger of it being seen as a men versus women kind of thing. I want to say at the outset that I do not want to at all diminish mothers and motherhood, but I want to bring forward the story of men and their place in the lives of children.

In speaking about fathers' perspectives there is a danger of generalising in a way that ignores the diverse cultural and other experiences of men. Finally, it seems the New Zealand Family Court system enjoys a fine international reputation as one of the better systems in the world, with many countries having to deal with family disputes in the criminal court and I don't want a critique of it to be taken as a negation of the advances that have been made so far. Yet there is still more world leadership we need to show in relation to the Court's understanding of the position of fathers.

Today we are addressing the question of how do men experience the Family Court and how could things be improved. At the morning break I got talking with a man in the foyer who it turns out is on security to ensure that protestors don't interrupt us today. It got me thinking that it mustn't be easy for those of you who work under intense scrutiny from the critics of the family court. However, it is worth remembering that men and women are driven to protest by anger and a sense of powerlessness.

Anger at authorities for separating them from their children is not a new thing as this poem by Percy Bysshe Shelley 200 years ago reveals. He was denied custody of his children by the Lord Chancellor (due to atheism and immorality!).

I curse thee (the Lord Chancellor) by a parents outraged love,  
By hopes long cherished and too lately lost,  
By gentle feelings thou couldst never prove,  
By griefs which thy stern nature never crossed...  
By all the happy see in children's growth  
That undeveloped flower of budding years  
Sweetness and sadness interwoven both,  
Source of the sweetest hopes and saddest fears...  
O wretched ye if ever any were,  
Sadder than orphans, yet not fatherless!  
Percy Bysshe Shelley, 1817

It might be worthwhile us pondering on what is today's version of "atheism and immorality" that we find makes men unacceptable as parents.

There is pain in that poem. There is pain under the anger of the men who are protesting at the Family Court today; there is pain in the children who are losing contact with their fathers. We feel pain when something important has been lost and it is worth taking note that this is what is trying to reach our attention - our children are losing something important.

I know something of this pain because my father died when I was nine and I know very well the challenge and struggle of growing without a father. Believe me, the void created by an absent father doesn't go away -- it becomes an imprint on life and one learns to live with it and shape one's

identity around it. My early biography as a youth and young man reveals a personal face of the negative statistics associated with father absence, from anger and rebellion, trouble at school and struggles with authority to fitting into society.

Today I would like to briefly take a broader look at fatherhood and then focus on some specific challenges to the Family Court being presented by fathers' groups.

Fatherhood is a cultural treasure

Fatherhood is a cultural treasure, passed down by previous generations, shaped by the current generation, and passed on for better or for worse to the future generation as a legacy. I can remember it being said at my father's funeral "...he was a good father, he provided well for his family". It was said and received in good heart and summed up succinctly what was expected of him by society of the time. The fatherhood story of his generation was that dad was the provider. Men expressed their family love through providing for them financially and society supported them in that role.

What is the cultural story of fatherhood we will pass on to the next generation? I see two different stories emerging. One story society is telling itself these days seems to be that fatherhood is superfluous. The father in the media is often portrayed as a figure of ridicule; we act in families separating as if he is replaceable and we largely ignore the positive aspects of fathers in social research and policy making.

At least a third of the children in NZ go to bed tonight in a home their father doesn't live in. These children are facing a challenge no other generation has had to face to such an extent -- maintaining a relationship with their father who lives in a separate household. We have heard this morning of many of the problems associated with this such as poverty and difficulty of developing a relationship that is meaningful and able to be nourished in the way a parental relationship needs to be nourished.

As a society we are not facing the challenge of supporting children in families who separate by helping men to stay in touch with them through that difficult transition of relationship breakdown. We are not doing a good job of hearing, seeing, or reaching for what men and their children need from us in order to maintain their relationship from different households.

The negative consequences associated with absent fathers are well established and research indicates a strong association with significant disadvantages. The data is alarming. Surveys of child well-being repeatedly show that children living apart from their fathers are far more likely to be expelled or suspended, display emotional or behavioural problems, have difficulty getting along with peers and get into trouble with the police. Fatherlessness is linked to a wide range of childhood and adolescent character problems such as lower achievement motivation, problems with self-control and insecure male identity.

Another story of fatherhood in our times is that there is a quiet but steady revolution going on in the hearts of men as fathers. My fulltime work and study over the past 12 years has been with men's personal development groups and support services, which means I have been listening to men and paying attention to an emerging men's narrative. I have learned from this that there are significant changes taking place in the hearts of men and a renaissance happening in fatherhood.

Over the last 30 years as women have moved more into the public sphere and the workplace, space has been created for men to consider other choices. Men are increasingly choosing to have more time inside the home and more involvement with their children. The nature of masculinity and how we

express ourselves as men is embracing more of the gentler and hands-on aspects of raising children that wasn't available to the previous generation of men.

Institutions haven't kept up

Why is it that as men's desires shift towards more involvement with children we have fewer children than ever living with their fathers? Specifically in relation to the Family Court, why haven't we kept up with the reality of maintaining children's connection with fathers when faced with the challenge of living in separate households?

There could be three possible reasons.

\* The conservative nature of the law and judiciary. It simply takes a long time to change things and the power-holders in the system are of a previous generation with more traditional world-views.

\* Ideological opposition to recognising men's needs. Much family policymaking and delivery over the past 30 years has been strongly influenced by politicised women's perspectives. We have spent the last 20 years with a lot of focus on male violence and sexual abuse and in some ways we have pathologised fatherhood in the process. We are swimming in a sea of shame and blame about men, of fear doubt and "creepification" of men's tenderness for children and it has shaped the way we dealing with them in the area of delivering family policy.

\* Simply not seeing men's needs. There is blindness and ignorance of the male perspective. This is partly the fault of men because men haven't been paying attention to articulating their needs very well. We have heard a lot from the women's perspective over the last 30 years but there hasn't yet been a strong narrative coming from men about our experience as fathers.

One of the good things about being at this conference as a man is that you don't have to queue for the toilets. At the break I could sail past the long queue of women to an empty men's block. But it shows up something as well doesn't it; it seems a fair reflection of our cultural assumption that children and families are considered women's business. Most of the staff are women. The only part of the family law that pays much attention to men is that which pursues them as financial provider or targets them as potential abusers.

Where are the men in the Family Court system?

The fact is that a man coming for services from the Family Court is going to run into women, who are likely to not understand his needs. The men who come for your services are often going through a relationship breakdown and are having difficulties with the female side of things. Where are the men they can talk to and feel understood by as they try to access your services?

I had a call from a man yesterday who was extremely angry. He had been beaten by his wife a number of times, had tried to take out a protection order that hadn't been served and was sheltering at his parents' house. He had called the Family Court for help and advice and spoke to a woman there and some of the things he reported her saying were really inappropriate to be putting to someone in as vulnerable position as he was. It served to fuel his anger at women and add to his sense of powerlessness when what he needed was to be heard and understood for what he was going through. The fact is it is difficult for many women to sit with men who are distressed and angry and acting out when their life is falling apart. I think this puts fathers and children of fathers at risk. The association of men with statistics of depression, addiction, and suicide at family break down are high. (Eg separated males between 30 - 54 years-old are 12 times more likely to suicide than separated women) 1 These are the sort of statistics we would associate with an oppressed people. We should be asking ourselves hard questions about them but instead we take them for granted and ignore them

A survey conducted by the office of the Commissioner for Children found that 92% of the people surveyed agree "society should expect fathers to take an equal part in parenting" yet 45% supported the statement "women are better looking after children".<sup>2</sup> It shows that most of us agree that parenting should be a shared job, but nearly half of us don't think men are up to it. This points to a confidence gap in fathers, felt by both men and women. The Family Court should be playing a role to fill this confidence gap, but instead is seen to be exacerbating it.

Maybe there is nothing new to you in what I am saying or maybe some of these challenges are striking home. As I look out here I see a lot of committed and able people, hardworking and thoughtful people who would like to do the best job you can. But what can you actually change in the way you are dealing with clients and creating policy that actually helps the children you serve maintain connection with their fathers.

#### Why the Family Court Protests?

You might be wondering exactly what is the problem fathers have with the Family Court.

There are a number of fathers' groups who have been lobbying the courts and media on the issues and I am sure those of you who have been on the receiving end of this have not found it comfortable, walking past chanting and placards and men pushing empty prams. However, I have been doing some listening to these groups and the issues they have been putting on the table about the functioning of the Family Court.

In a nutshell their experience can be summed up in one word: a sense of EXCLUSION. Fathers' groups feel that the court acts to exclude fathers from meaningful contact with their children. They say that aspects of family law create incentives to promote family breakdown, parental alienation and fatherlessness.

#### Terms and definitions

There are some terms and definitions that activists in the area are identifying that you should know about.

#### Maternal gate-keeping.

This refers to the social assumption of women's ownership of children and things to do with family and relationship. Due to the fact of childbearing and early childcare and gender conditioning, women often are the emotional switchboard of family and this gives them immense power. The assumption and practice of women's ownership of children shuts men out.

#### Parental alienation

This refers to the process of a child being alienated from one parent by absorbing negative opinions about them from the other. A parent can create an atmosphere about the other parent that undermines the child's relationship with them (usually the non-custodial parent.) It is encouraged by policy that sets interim custody, usually with the mother while the father has minimal access. This can be a subtle process as well as overt and purposeful and it is apparent that the court process is powerless to take this into consideration.

#### Primary caregiver

The Family Court works for what it considers the best interests of the child, which often boils down to considering the least detrimental alternative. In practice, this is interpreted as what would mean the least disruption to the child in terms of their home and who has been their primary caregiver. This most often leads to the child staying in the home with the mother and the father moving out.

The assumption of placing the child with the parent identified as the

primary caregiver is flawed. It forces us immediately to have to make an either/or choice between the parents, (as does seeking who has the closest psychological bond as basis for choice).

Forty per cent of fathers of young children work 50 hours or more to provide for them.<sup>3</sup> When it comes to identifying who should have custody of the child, the provider of financial support is not considered as important as the at-home parent. The fact that fathers have sacrificed time with their children in order to support them reduces the chances of children being given into their custody. The children are disadvantaged in the long term by the provider role their father held in the past parenting relationship.

When two parents are living together, the roles are often divided along traditional lines (better income and division of labour, that's how our parents did it, etc) because it works more effectively that way. But separation is an opportunity many men want to take to have a more active role in parenting, and they often flourish in it and discover new sides of themselves. I know of many men, and I am sure you do, who have reshaped their priorities after separation to make space to have their children at least half the time. The child is enriched by this new and loving experience of the father, which he was not able to get when his father was solely the breadwinner of a nuclear family. This must surely enter into our thinking about the best interests of the child. It gives fathers the opportunity of being more engaged and children the opportunity to grow a relationship with the father.

The idea of primary caregiver sets the stage for awarding sole custody and is linked to assumptions of the idealised nuclear family with mum as caregiver and dad as provider and weds women more strongly to caregiving and institutionalises men more strongly as "just a pay-packet".

#### Sole parent family

This is a common expression even if children actually have two parents who are highly involved but happen to live apart, and it makes fathers' contributions invisible. It is reinforced by data collections such as the Census, which doesn't identify parents who no longer live fulltime with their children, or even families where children spend equal time in two households. It would be more accurate to use the phrase "two home children" to describe children whose parents have separated.

#### Shadow of the law

The position of the Family Court seems to be that the law only affects those whose cases are resolved at a full hearing. It is argued that only the difficult people end up in the Family Court at a full hearing and that what happens there doesn't have any effect on the majority of situations. However, there are wider consequences of judges' decisions which send a signal and affect behaviour all the way down the line. This goes for both decisions made against the child's relationship with their father as well as those made for the relationship that are not enforced (such as access orders), as well the lack of will shown by judges to stop false accusations of abuse used to remove a father from the family. The lack of support for fathers in the Family Court undermines the position of all fathers.

#### Issues and Action

Groups who want the Family Courts to become more inclusive make some suggestion as to how it could be fairer to the children's relationship with their father.<sup>4</sup> They suggest:

##### 1) Gender bias

The courts are highly educated and aware of women's needs and perspectives, but not so about men's and are unwittingly delivering one-sided service. The court has a cultural blindness to the needs and aspirations of men as

fathers and doesn't support men with the kind of resources they need to deal with the difficult stage of relationship separation.

Men are running into an invisible glass door that screens them out of family services similar to the glass ceiling women have talked about in the workplace. The front line staff, the coordinators, the counsellors and the lawyers involved, in the overwhelming majority, are women. They "don't know what they don't know" about men and the male way of seeing the world and can resort to simplistic assumptions causing men to be sidelined. Men who need a man to talk to are alienated by the process.

Suggestions for action:

- \* There needs to be immediate and wide-reaching consciousness-raising and education.
- \* Need for male faces and male-friendly contact.
- \* Staff training to be male-empathetic, knowledgeable and helpful.
- \* Male policy input from head office level down.
- \* A committee of father-wise advisers.
- \* A father-friendly Family Court engagement process.

## 2) Early intervention

There needs to be early intervention to help both parties prioritise the needs of the child and develop cooperation. Minimising the cases going to court through more effective mediation, support and education for the parents as to the importance and role of both parents in bringing up the children, and support services for men to help them through the challenging time of breakup when they are more at risk. The primary objective should be to evolve a viable parenting plan.

Suggestions for action:

- \* Trained mediation (not simply a tack-on to a lawyer's service).
- \* Intensive and ongoing parenting support needs to be available (possibly compulsory) to assist both parties to remain involved and help the child maintain relationship with both parents.
- \* Special awareness of the vulnerable position of men post-separation. Men need specialised programmes and support services here and there is a role here for Family Court rather than fobbing it off as some other departments' job.

## 3) The slow speed of the court

Under the current system where if there is conflict access has to be won, the legislation is contributing to the prevalence of paternal deprivation. The slow speed of the court in dealing with conflicts and protection orders means the father parental relationships breaks down at a crucial time and the pattern of a distant father is established. There is a cumulative effect of small changes, starting at the initial decision of who has custody/access at the beginning of a family separation. This sets a template that is later adhered to because it is seen as best to stick with the status quo.

Suggestions for action:

- \* It should be a primary aim to preserve the parenting relationship.
- \* A minimal starting point is important which occurs as soon as any action is filed in the Family Court to ensure that the relationship the child has with both parents is maintained.
- \* Speed up hearing ex parte access orders and protection orders. The length of time things currently take causes separation anxiety in children, damages relationships between father and children and breaches natural justice.

## 4) The practice of choosing a major caregiver

The law has it that parents are equal guardians and that a guardian should lose custody only if there is a good reason. Current application of custody

and access gives most effective power to one parent (usually the mother) and doesn't support the development of child's relationship with the father. Resorting to this simple either/or formula for choosing where the child should be, means the father loses effective guardianship for no good reason. When families divorce or separate, children are forced to divorce their father.

Suggestions for action:

- \* Act with an assumption of shared contact as default position to stop the adversarial nature of the proceedings, and interrupt the system where access has to be won.

- \* Enforce access arrangements if violated. I know the court takes a dim view of access order violation but at the moment it shows very little will to back them up.

## 5) The Domestic Violence Act

The goals of the DVA are laudable in protecting women and children. However, the way it works is also isolating children from loving fathers because the child is automatically included in the order. It doesn't follow that if a parent is violent to their partner they will be violent to a child. Supervised access is often unnecessary and is degrading and not father friendly, taking place in an impersonal agency in the presence of a stranger, usually a woman. Most cases challenged by fathers who want to maintain contact with their children are turned around when looked at by the court but by then a lot of time has passed.

There is also a huge sense of injustice in men about being assumed guilty until proven innocent (no wonder we see some angry critics) because an order can be taken out with no supporting evidence. There is also no ability in the process to discern what violence is contextual to the stresses of separation and what is longer term and systemic.

Suggestions for action:

- \* Ex parte Orders and permanent orders are taken on insufficient evidence, and there should be a standard of testable evidence.

- \* Don't automatically include children on order.

- \* At the moment there is no disincentive for applicants making false allegations.

Most of you in this hall will have heard of examples of lawyers playing wind-up on the issue of alleging violence from their client's partner in order to improve their client's chances of winning the case. The Family Court community needs to be talking more openly and challenging this because it is in the way of our purpose of maintaining the children's right to both parents.

## 6) Broaden the conversation on violence

The way we have focused on domestic violence and child abuse solely on men has served to pathologise fathers and pave the way for easy removal of them from their children. It is now time to widen our conversation about violence to include an analysis of women's contribution to domestic violence. (This is a challenge for courageous women to step forward). By putting all the focus on to men we are making them a scapegoat to carry an unrealistic blame for all human violence and also are not challenging the violence done by women in the family nor giving support to women to stop it. Men are reluctant to lay complaints against women who are violent to them or their children and they are not so easily believed by the authorities.

## 7) Closed Court

The court's activity being closed to public scrutiny means that activity doesn't feel transparent and accountable and justice isn't seen to be done. The courts have an expectation that the public should take the court's own

assessment and reassurance that they are doing well without the accountability of visibility. It would also help those in society generally to know what to expect from the Family Court rather than it coming as a shock and surprise when they run into it, and it may serve as an incentive to sort things out before they get to court.

Suggestions for action:

- \* Open proceedings as much as possible allowing for clients privacy, and have reports be open and accountable.

#### 8) Research base

Research projects generally on social issues from a female to male perspective run at 20:1 and usually prove what they set out to prove. Much research on men is carried out by women.

Suggestions for action:

- \* We need a lot more research about men and men's experiences in the family, and statistics about the Family Court and its outcomes made available to the public.

#### 9) Inertia

The court displays a lack of will to change in response to repeated and sustained challenge.

Suggestions for action:

- \* There needs to be a programme for taking action from today so that this conference has an action outcome.
- \* At both local and national level, involve men in awareness-raising, research and policy development.

Many of the problems I have raised here could be easily addressed in the way the Family Court operates. Others should be taken into account when considering reforms. To a large extent, the problems are ones of a lack of awareness and sensitivity to the issues and the challenge is now act in a more father/child friendly way.

#### Closing words

It can be hard to take on critical feedback. We can feel personally attacked and want to defend ourselves and justify what we do, and especially in the case of the Family Court it is easy to find fault with how our critics are less than perfect themselves.

But who is the enemy here? Who is standing in the way of a larger consensus of the way to enable children to maintain a better relationship with their fathers? It isn't simply down to evil people, or stupid people in the institutions or the community, or "the system" itself. Nor is it the protestors outside the courts with placards and loudspeakers or men pushing empty prams.

The real enemy is good intelligent people whose instincts and gut feelings and analysis tell them that something needs to change, yet they don't take action. At the moment the power is within each of you to take action within your sphere of influence. My challenge to you as good intelligent people who would wish to leave a legacy to future generations is to connect with your will to make change and take on the hard and high-risk task of building a better institution in an imperfect world. More of us need to see the problem as being "in here" and not "out there". In short the enemy is people who have the potential to lead and act and who do not do so.

The way to defuse the polarisation between the critics and the Family Court is for each of us here to look within and find our own sense of disquiet about current policy and practice and outcomes and therein find the leadership that will make the change for the children of the future.



Thank you for listening.

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Rex McCann

Rex is well known and widely respected for his work in the area of men's awareness in New Zealand with 15 years active experience in men's groups both in New Zealand and internationally. He is the founder of the groundbreaking Essentially Men programme which over the last 12 years has become an important focus for men's self-development work in Auckland, Wellington and Christchurch. He is also a founder of the New Zealand Heart Politics Gathering and the New Zealand Men's Leadership Gathering.

Rex has a Masters degree from the School of Social Ecology at the University of Western Sydney Hawkesbury, focusing on men's and boys' issues. He is author of *Fatherless Sons* - the stories of New Zealand men released by HarperCollins (In Australia under the title *On Their Own* by Finch Publishing). He lives with his partner Maggie, on the edge of Auckland's Manukau Harbour and shares the parenting of two young men.

He conducts seminars and talks throughout New Zealand and Australia to conferences and to the public on men's issues, raising boys, boys' education and the importance of men and fathers in the lives of boys.

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## Court Of Injustice

### Published in June 2001 North & South

By 2010 it's expected that three quarters of all Maori infants and half of all Pakeha infants will be growing up in households with no fathers. A growing movement of angry men suggests the legal pendulum in the Family Court has swung too far against fathers who want an equal role in raising children after relationships go wrong.

LAUREN QUAINANCE investigates.

Lauren Quainance is a North & South senior writer

NOBODY AT LAW school ever told Rob the law could be unfair. He was destined to be a commercial lawyer in a small firm dealing with the dry, minutiae of legal contracts but he still subscribed to the high-minded principles he was taught as a student in the mid-1970s. His was a worthy profession. Something to be proud of.

So nothing prepared him for what happened when his marriage to his wife broke up in the mid-1990s and custody of their two primary school age children came before the courts. For the first year the estranged couple had a private agreement that meant the children saw their father three weekends out of four and one night during the week.

Then, for reasons Rob describes as "vague", the most valid of which was that the children were tired, his ex-wife limited his contact to alternate weekends.

The Family Court would not recognise the agreement his wife signed a year earlier so he formally applied for access. After spending \$8500 on lawyers' bills "without seeing the inside of a courtroom" at a time when he was worst-off financially as he tried to set

up a new household, he reluctantly agreed to one weekend per fortnight and school holidays. "I could see it was pitching toward a common result. Whether I was a good father or an indifferent father I was going to get once a fortnight.

"My wife and I were both professionals. We'd both worked and had nannies. I'd bought into the whole message of the 80s so I wiped as many bums and chins as my wife but when it came to the break up I was regarded as a spare parent. The message to fathers has been 'Get involved'. You can't just turn that off when you want to."

Although Rob's own case has been resolved amicably enough — his ex-wife has followed the new agreement reached in the court and he has nothing to gain personally by speaking out (and a great deal to lose professionally because he is seen to be "breaking ranks") — he was left with an uneasy feeling about how the Family Court treats fathers when relationships involving children go wrong.

"I have the dual perspective. I'm a lawyer and I've also experienced it at the coal face. It was a shock to see the systematic bias against fathers there at every turn. When I was lectured in family law in the 1970s we were taught about the 'mother principle', the idea that the mother was best suited to the parenting role. In the mid-70s that was probably right but there's been this sea change in social development. If you see families on the weekends it's the dad that takes the child to the changing room as much as the mother. Yet somehow that's been bypassed by the Family Court. They haven't woken up to the fact we've had this enormous shift in social attitude."

Worse, he has been shocked by how the principles of "beyond reasonable doubt" and "innocent until proven guilty" he held so dear are totally disregarded in cases where allegations of physical or sexual abuse are levelled against fathers in acrimonious break-ups where the mother may be attempting to punish her partner or win sole custody.

"For whatever reason all that we learned at law school about justice and due process and justice being seen to be done... that's all sacrificed for what's in the best interest of the child. They justify suspending all these important principles on the basis that the welfare of the child is paramount but my argument is they're not achieving the outcome which is best for the child because a child needs a father. People go into the Family Court as a family and come out with the father detached from the kids."

Is the Family Court really preventing Dads from having a meaningful relationship with their children? Is all the rhetoric about the importance of fathers meaningless when faced with the powerful, politically correct feminist and child protection movements?

And can fathers ever really compete against the mystical "mother-child bond"?

IT'S NOW MORE than 30 years since politicians drafted the Guardianship Act, the law that's meant to determine how children will be cared for after a relationship breaks down. It basically says both parents are responsible for children (unless the father isn't

living with the mother at the time of the child's birth in which case he has virtually no rights) and introduced the all-important principle that the welfare of the child should be paramount. Since that time, in the late 1960s, divorce and de facto relationships have

become commonplace and women have joined the workforce in large numbers. So it's surprising, then, that with a little tweaking over the years the Guardianship Act has largely remained workable in a time of great social change.

When the Family Court was established in 1980 to hear disputes about matrimonial property, custody and access previously heard in public in the District Court, new laws made it easier to obtain a divorce on the grounds of "irreconcilable differences" proved by a couple living apart for two years. The Guardianship Act was amended at the same time to stipulate that children of a failed relationship should be placed with the most suitable parent regardless of that parent's sex or the age of that child.

Last year 9912 marriages in New Zealand ended in divorce and although many de facto and married couples who separate agree on custody and access arrangements for any children of the relationship, last year the Family Court heard more than 14,000 applications for custody and access. (13,517 applications are recorded on the Family Court database but that doesn't include some smaller courts in rural towns).

Because the court's philosophy is to try, where possible, to resolve disputes without resorting to a traditional, adversarial court hearing with expert witnesses and lawyers arguing for both sides, less than 10 per cent of cases proceed to a full defended

Because so few cases end in full-blown hearings supporters of the Family Court can claim most cases are settled by “mutual agreement” and that the disaffected men represent a tiny proportion of cases dealt with every year. What that doesn’t account for is the many men like Rob who give up before a defended hearing because of mounting legal costs or because they believe the outcome is a fait accompli.

It’s impossible to say how often the mother walks away with custody of the children because the Department for Courts stopped recording the gender of parents awarded custody in 1990. But at that time, a decade after Parliament passed unambiguous law that the Family Court should be gender blind, mothers were awarded sole custody in 74 per cent of cases where custody was disputed. Fathers won sole custody in 13 per cent of cases. In the remainder children were split up or parents had joint custody. That probably reflects the prevailing view encapsulated by a 1994 report on the Family Court written by Department of Justice staffers Georgie Hall and Angie Lee. The pair defended sole maternal custody arguing that local and overseas research suggested children who lived with solo mums had emotional, behavioural and educational difficulties not simply because they only had one full-time parent but because of more “complex reasons” including conflict between parents and the fact the mother was likely to be worse off financially after a separation from a partner.

The report said the “sustained attack” on sole maternal custody was not justified and the “growing enthusiasm” for joint custody in the United States was misplaced because children were no better off than those in the sole custody of one parent and only worked where there was a high degree of co-operation between parents.

The same report suggested fathers may pursue custody as a “sinister bargaining tool” to pressure mothers into reducing their matrimonial property or maintenance claims, suggested unemployed fathers were motivated to apply for custody to get the DPB and

said some men pursue custody to punish an ex-partner who broke up with them.

Nowhere was any mention made of mothers who pursued custody for financial reasons (to qualify for the DPB, maintenance or matrimonial property) or mothers who pursue custody or control access to punish a man who broke up with them. The underlying assumption seemed to be the women were blameless victims in such disputes and they had to fight off “sinister” attacks on their natural caregiving role.

Christchurch civic creche worker Peter Ellis had been convicted the previous year and hysteria about sexual abuse and particularly “recovered memories” of abuse was at its height. The report acknowledged that while false allegations of sexual abuse may

happen from time to time sexual abuse in families was “endemic to our society at a disturbingly high level” — a statement made without reference to any statistics and that appears to unquestioningly accept the now discredited claims made by lesbianfeminist psychologist Miriam Saphira that led to a Telethon in the 1980s based on the idea that “one in four girls will be abused by age 18, half by a member of her own family”.

The views of lawyers who said the standard of proof was too low in sexual abuse cases were dismissed. The report’s authors acknowledged false allegations probably occur, but argued that because a man accused of sexual abuse in custody proceedings would

not be sent to jail (but would all but lose access to his children) it was best to err on the side of caution because of the danger to children if he were guilty.

Several years had passed since sweeping law changes were made because of the growing realisation that victims of male violence and sexual assault weren’t getting a fair deal. The law was changed to allow men to be convicted of rape and child molestation on the uncorroborated word of women and children. The police stopped treating domestic violence as “just a domestic” and adopted a “believe the victim” approach and began arresting and prosecuting men accused of assaulting their partners.

It’s in this climate that the 1995 Domestic Violence Act (DVA) was passed into law. If fathers found it difficult to get joint or sole custody of their children before, the DVA made things considerably more difficult. That’s because the radical piece of legislation

with the laudable goal of protecting women and children from violence is preventing ordinary, loving fathers from having a meaningful relationship with their children.

Before the law was changed women who were battered by their husbands or partners could apply for a non-violence order or a non-molestation order under the 1982 Domestic Protection Act. These were difficult to get and well under half the applications for final orders made in the Family Court in 1990 were actually granted.

And just because a man had hit his wife (or vice versa) the prevailing view was that didn’t necessarily mean they were a bad parent who was likely to abuse their kids.

That all changed after Wanganui man Alan Bristol joined his three daughters Tiffany, seven, Holly, three and Claudia, 18 months in the backseat of the family car in his garage in February 1994, connected a hose from the exhaust to a partially open window and started the engine. Bristol and all three girls died of carbon monoxide poisoning but not before he apparently changed his mind; he was found with an arm outstretched towards the ignition and the key was switched off.

Bristol and his estranged wife were involved in an acrimonious Family Court custody dispute, and despite the fact there was a long history of domestic violence between the pair, he was considered “a loving father” and had interim custody. The day before the

killings Bristol was charged with indecent assault and assault on a female after an altercation with his estranged wife when the girls were handed over for access.

The Minister of Justice ordered an independent inquiry by [High Court Judge] Sir Ronald Davison into the Bristol case which was ultimately the catalyst for the DVA. In his report Davison argued that if someone had been violent toward a spouse then there

was “good cause to suspect” when the relationship broke down the violence would be redirected toward any children even if they were previously a model parent.

He proposed domestic violence be treated equally to other forms of violence, penalties for breaching non-molestation orders beefed up, stricter enforcement, better mechanisms to protect victims when children were handed over and, crucially, that when a person has been shown to be violent to either a child or spouse in a domestic situation then that person must automatically be assumed to be unfit to have custody or unsupervised access until such time as they can prove they are a fit parent.

IN THE EVENT the government went even further than Davison proposed and overhauled our domestic violence laws in several fundamental respects. First, the definition of domestic violence was broadened to include not only physical and sexual abuse but also psychological abuse. Most countries have laws banning “harassment” or “molestation” but no others have quite such a woolly term as psychological abuse.

The DVA’s definition of psychological abuse is open-ended: it says it includes but is not confined to intimidation, harassment, damage to property, threats of physical abuse, sexual abuse or psychological abuse or allowing children to witness any kind of abuse.

The meaning of the term is widely debated although a Department of Justice/AGB McNair report titled Hitting Home released at the same time as the new Domestic Violence Bill was before Parliament in 1995 identified 11 types of psychological abuse.

They included smashing or throwing objects, humiliating and threatening a partner and simply putting down family and friends or swearing at or insulting a partner.

Given that it was the same Department of Justice officials advising the government on the new DVA it has to be assumed they, at least, meant for swearing and name calling to be cause enough for a protection order to be granted. This is despite the fact that in the same report the authors admit that the “study of psychological abuse is in its infancy” and there was no evidence to link psychological abuse to physical abuse.

Secondly, the DVA established a single act of violence or a number of acts that form a pattern of abuse even if “when viewed in isolation may be minor or trivial” would constitute domestic violence. In other words there was no longer any need to establish a person had a violent history. Under the law a slap delivered after discovering a partner in bed with a lover — or a series of insults — would be treated the same as repeated, sustained beatings leading to hospitalisation of the victim.

The DVA says domestic violence in all its forms is unacceptable and legal manuals on the act interpret that as a clear signal “there is no room to argue that any form of domestic violence is morally defensible and the scope for arguing mitigating factors must likewise be reduced”. That means arguing that the abuse — psychological or physical — was provoked or was a one-off lapse is much less likely to succeed. The act also made it compulsory for spousal abusers to attend an anger management course.

In keeping with Davison’s advice, the third most important way the 1995 legislation shifted the goal posts was by stating that violence to a spouse observed by a child counts as violence towards a child and by automatically extending a protection order to any children of an applicant regardless of whether they’d suffered any abuse.

The Guardianship Act was amended to accommodate the new DVA so when an allegation of violence made under the act or raised in custody proceedings is “proved” (and we’ll get to the standard of proof shortly) the court must not award custody or unsupervised access to the violent parent unless it is satisfied the child will be safe.

That reversed the presumption existing before the Bristol murders that someone who is a wife beater (or an alleged wife beater) won’t necessarily harm a child.

What has this meant in practice? As well as being easier to get a protection order under the DVA in 89 per cent of the 28,755 applications for protection orders since 1996 (of which nine out of 10 were applied for by women) an order was issued “ex parte” without informing the alleged abuser or holding a hearing where the allegations could be defended. The accused may demand a hearing to challenge the order after being served with it but must do so within three months or it becomes permanent. Lawyers have told North & South that in almost all cases the only evidence provided to the court to support an application for an ex-parte order was the complainant’s sworn affidavit outlining claims of physical, sexual and/or psychological abuse. Lawyers who

apply for ex-parte orders are required to sign a certificate essentially saying the application is a “proper case”, a declaration usually based entirely on the lawyer’s impression of the applicant’s veracity -- something some feel uncomfortable about.

Corroborating evidence such as medical certificates, police reports, criminal records or witnesses was rarely available quickly enough to be considered or did not exist. Most protection orders are issued without the judge who signs them off so much as laying

eyes on the applicant or her lawyer. Most applications are dealt with by fax or email.

“One of the difficulties with the Domestic Violence Act is the speed someone can get a protection order. It’s seen to be like Dial A Pizza,” says Hutt Valley family lawyer Paul Paino. “You get one in two hours and the police or bailiff serve it within 24 hours and

if you want to get that order lifted or changed — or you don’t think it should have been made in the first place — it can often take a month or two to get a hearing and in the meantime the person is not allowed to see his kids.”

Few men defend protection orders before the three-month deadline when they automatically become permanent, a fact that’s been used to suggest most orders are justified and domestic violence is rife. However, the fact that less than 20 per cent of orders

are defended may not necessarily mean most men don't bother to front up in court because they're guilty. To be sure, many protection orders will be justified — and indefensible — but many more defences are initiated than proceed to a hearing. That suggests many simply can't afford the legal bills. One of two companion 1999 Ministry of Justice (MOJ) studies found 61 per cent of non-custodial parents were refused state-sponsored legal aid in DVA cases (compared with 15 per cent of usually female custodial parents). Even if legal aid is awarded defendants may be required to make a contribution toward their legal aid bill whereas applicants aren't. This has made it easier for housewives financially dependant on their husbands to escape violent relationships, but it also means men of limited means feel as though their ex-partner has an "unlimited" legal budget while they spend \$8382 on average on lawyer's bills.

That this comes at a time when matrimonial property is being divided up and men face child support payments as well as the cost of establishing a new household for themselves, severely restricts their ability to defend protection orders. (That court delays meant three out of five cases in the 1999 MOJ study dragged on beyond the 42- day period in which a hearing is supposed to be held probably didn't help.)

North & South has learned many lawyers also advise men to think twice about defending the orders. Wellington lawyer David Howman has spent most of his 30 year career practising family law and says while he would always stress to a client that it was his decision, he suggests they carefully consider defending a protection order because of the not insignificant cost and the fact they're "not easy to defend" because the onus is on the respondent to disprove the allegations made.

Like many cases in the Family Court there was often little evidence except the word of the couple in dispute unless the alleged victims had visited a doctor or a refuge. Often violence happened behind closed doors, or was kept quiet, so the court's decision often came down to a matter of which party was most credible.

"It used to be more difficult to prove there had been domestic violence but the emphasis under this new act has been to believe those people who make the allegations and the onus is [on the respondent] to refute them which is difficult to do. A lot of it is in the mind of the beholder. If the victim perceives there is a threat or erratic behaviour then that counts. Judges can take account of that perception."

ONCE AN ORDER is served, the man who is alleged to be violent is automatically banned from seeing his children until the court can assess the risk. Lest this be considered a rare occurrence consider that three quarters of applicants for protection orders have children and, in the first three years the DVA was in force, 42,959 children were named on protection orders sought by one of their parents.

When an allegation of violence is made against a father it's likely he won't see his children for months. In the 1999 MOJ survey of 558 cases a third of violent parents had not seen their children six months later. The average period of no access was 15 weeks. (The court says this "hiatus" is partly due to the fact fathers are slow to apply to the court for access after they've been served with a protection order.)

Most of the time there's no suggestion children have been harmed by the "abusive" parent nor is there any suggestion from their mother she fears for their safety. Of the affidavits examined by the MOJ 76 per cent included claims children had witnessed physical or psychological violence toward the mother. In only 24 per cent of cases was it even alleged children were abused, neglected or somehow put at risk.

When deciding if allegations are true — and assessing the risk posed to any children — the rules applied in criminal trials don't apply. The Family Court can admit any evidence it sees fit whether or not it would stand up in any other court of law and uses the civil standard of "on the balance of probabilities" rather than the criminal standard of "beyond reasonable doubt". That leads to cases [see John's Story] where the police have insufficient evidence to lay charges — or refuse to even investigate — but the Family Court will accept the allegations as true when ruling on custody.

In some cases the court will judge the allegation true before criminal proceedings are held and a man found "guilty" in the Family Court might be found not guilty of the same offence in a criminal court. This is despite three American studies showing up to

50 per cent of sexual abuse claims made during custody proceedings were false.

If the court finds that abuse is "proven" then it cannot award custody to the abusive parent or order anything but supervised access unless it thinks the child will be safe.

Judges frequently base their decisions about how safe a child will be in a parent's care on "little information" according to the 1999 MOJ report. It's reasonably common to refer parties to counselling and appoint a lawyer to represent the child but the report found a social worker's opinion about the child's safety was called for only five per cent of the time and a psychologist's report just two per cent of the time.

When deciding that question the scales are weighted further against men because the court must consider whether the custodial parent thinks the child will be safe with the non-custodial parent. This shifts the power back into the hands of a mother who may have fabricated the allegations, is paranoid or mistakenly believes abuse occurred.

Even in cases where the court concedes an allegation has not been proven, the law allows it to err on the side of caution. If the court decides there isn't enough evidence (even by its own looser standards) and believes there is a risk to the child it can impose any order it likes. Usually it will order two hours supervised access per fortnight — equivalent to just over two days a year — and father is only permitted to see his children in a court-approved centre where he is closely supervised by staff.

Although meant as a temporary measure until the father can prove the child would be safe with him (and many question how it's possible to prove such a thing especially when the mother's perception of the child's safety is given weight) North & South has learned of cases where fathers have not seen their children outside a supervised access centre for several years because the mother won't agree to have a relative (even one of her own) supervise him. Some men refuse to see their children altogether rather than

When women fail to deliver children to see their fathers as agreed the system is apparently inept at forcing them to comply with court orders. It’s possible to apply to the court for a warrant to have the children uplifted by force but, as well as not wanting to put children through such a traumatic experience, the police are often reluctant to get involved. One man has gone to court 17 times to get a warrant to have his children delivered as per the court’s agreement [see Duncan’s Story.]

Meanwhile, police will not hesitate to lay charges if a protection order is breached. Recent cases include:

Wellington computer engineer William Donachie pleaded guilty to a charge of breaching a protection order after sending his then 12-year-old daughter an “inoffensive” Christmas present of a leather vest, key ring and wallet. He had not seen his daughter for more than two years. [He was given a suspended sentence].

A man (whose name is suppressed) was given a discharge without conviction in the Invercargill District Court after sending his daughter a Christmas card from jail.

AS A LAWYER Rob — who was never accused of any violence himself — is troubled by how far the pendulum has swung against men. As a father he is outraged.

He suggests the following is a common scenario: “A wife has decided to leave her husband to take up with somebody else. Most people will have a response which, for that moment in time, is possibly threatening to the other party. She goes off and gets a protection order which immediately covers the children. He might be a totally loving father but he is immediately injunctioned from being a father to his children.

“Most orders are issued ex-parte and that runs against the due process of law; a decision shouldn’t be made against you without you being heard. That fundamental principle is not working in the Family Court. I wouldn’t have an objection to that if there’s a threat of real violence as long as within a week you could be heard but sometimes this goes on for months and months and sometimes years before there’s a full hearing and in the meantime you’re ordered to do an anger management course.

“Judges are terrified of getting it wrong. We’ve had cases like the Bristol case in Wanganui and the Perkin case in Nelson where children have been murdered by their parents (the father in the first case, the mother in the second) after a Family Court decision. The legal profession is by its nature very conservative and cautious so judges and lawyers will kick for touch every time.

“If you’re lucky you’ll get to see [your children] in a church hall with somebody from Barnados listening to your every question, censoring you in case you’re trying to get information about their mother. You’ll probably get two hours at the most once a fortnight and you’ll likely pay \$50 a time for the privilege. If you’re not truly a violent man that’s an outrageous disruption of your relationship with your kids. Your kids think there’s something wrong with dad because it’s like visiting him in jail.”

Separated Fathers’ Support Trust secretary Bevan Berg left the police force in the mid-1980s and now runs his own freight business in Auckland. We are not permitted to publish the particulars of his case except to say he was “stunned” by his own experience after he left his wife in 1995 and he has spent considerable time analysing the DVA in the sober, measured manner that an ex-cop can bring to the task.

Having visited enough “domestics” in his time as a beat cop he accepts there is a genuine need for a law to protect against men (and women) who beat their partners and says his comments are not an attempt to excuse or in anyway condone violence. However, he’s concerned that where children are involved the law errs too heavily on the side of caution, doesn’t properly examine claims and appears to take the view that women are beyond reproach, that women don’t lie and they’re certainly not violent.

“There’s a pretty wide interpretation of domestic violence which can come down to waving a finger at someone or slamming the door. It doesn’t take much to make that finding. Judges tend toward a convenient safety point. If you look at the outcome of [custody cases involving the DVA] the default position is always supervised access.”

Berg suggests the DVA has been used cynically by lawyers who employ it as a “tactic” to win custody because a man accused of violence will be tarnished in custody proceedings. And he wonders why when the safety of the child is paramount older children are not asked whether they think they will be “safe” with their fathers.

The crux of the men’s complaint about the Family Court is this: it appears to operate under entirely different rules than any other court and in the name of “child welfare” — a principle they claim to support — runs roughshod over their right to a fair hearing. The court already assumes men are capable only of being “weekend dads” so it is seen as no great loss to limit them to two hours supervised access a fortnight.

Underpinning all this seems to be the quaint assumption that women are nurturers and

aren't violent. It's the kind of thinking that means we still have a criminal charge of male assaults female but no equivalent charge of female assaults male. Studies on domestic violence in this country paid for by government departments make scant or no mention of the problem of women's violence toward men. And we only need look at the high-profile child abuse killings in the last year or so, and note that females were the sole perpetrators in at least three cases, to know women kill children.

And it's not just the occasional crusader expressing concern about the brand of justice delivered in the Family Court. The fledgling men's movement is comprised of about a dozen organisations across the country with names such as Caring Fathers, Men and their Children, Separated Fathers Support Trust and FARE (Fathers Apart Require Equality.) Some organisations were formed in the 1980s but the movement was given impetus by the passing of the 1993 Child Support Act which, among other problems, badly disadvantaged non-custodial parents who started a second family. Exact numbers of men involved is difficult to gauge but the Men's Centre North Shore has 370 subscribers to its monthly newsletter Menz Issues around the country and another 170 hits per week on its website from which the newsletter can be downloaded.

Alliance MP Liz Gordon described the disaffected men to the Assignment television programme last year as the "knit sweater brigade" rather than "sharp suits" who possibly blamed their lack of success in life on their marriage break-up. During research for this story North & South spoke with architects, lawyers, policeman, exjournalists, small businessmen as well as beneficiaries concerned with the status quo.

Some are undoubtedly obsessed with getting better access to their children even going so far as quitting jobs, shifting to smaller homes and spending all their capital to "get justice". And the disparate movement is split over how to best achieve its goals: some have targeted "menophobe" Family Court employees by pasting signs outside their homes, others have threatened the lives of judges or police and some favour a campaign of "civil disobedience" including refusing to pay child support.

Whether they can become a serious political force will largely depend on whether it evolves into a coherent national movement and if the sometimes intemperate men on its fringe who do themselves a disservice by downplaying the effects of domestic violence — or attacking the women's refuge movement — can be brought into line. Bruce Tichbon, the Wellington telecommunications consultant who spearheaded the campaign that led to a government review of the 1993 Child Support Act, knows that what he prefers to call the "families movement" needs a strong and credible leader. Although he's willing to do the job his body isn't: he developed chronic fatigue syndrome about two years ago and is simply unable to get out of bed some days.

"The women's movement has grossly out-performed the men's movement," he says bluntly. "I think the women's movement is too militant, I think they do a tremendous amount of damage to society but they're a brilliant political movement. Basically the problem with the men's movement is they've been out organised and until they get their act together, and show the politicians they can match the women's movement at the ballot box, then men are going to continue to get a rough deal."

WHEN THE Family Court opened for business in 1981 Patrick Mahony was one of the first judges sworn in and in 1985 he was appointed the court's chief judge. Entry to his offices on the eighth floor of an office tower on The Terrace is controlled by swipe card and the atmosphere is sterile and hushed except for the sound of air conditioning. On his bookshelf a copy of *Fathers After Divorce* by Michael Green QC — one of the most trenchant critics of the Australian Family Court — is prominently displayed. The silver-haired, patrician Mahony is flanked by a young lawyer who introduces himself as the judge's assistant and judicial communication's adviser and former journalist Neil Billington. Although interviews with judges are rare, Mahony agreed to an interview that ran well over the 45 minutes allocated because he's anxious to defend the court against what he says are "misleading" claims made by fathers' groups. Mahony denies the court is biased against fathers and says judges heed the law's direction to award custody to the most able parent regardless of their gender. He's adamant the court is not stuck in a time warp but is reflecting social change that means men are now more involved in the day-to-day parenting of children. Shared parenting is an idea that first emerged in the 1970s and 1980s and he claims the "vast majority" of arrangements made by parents could be described as shared parenting or shared custody. However, this claim turns on a question of definition: Mahony certainly isn't saying most children split their time equally between separated parents.

"Some people think of shared parenting or shared custody as the amount of time each



parent spends with a child and a lot of people that come to court are looking at balancing up so many hours of the week with one parent and so many with the other. What we try and do is look at it from the child's point of view. Very often you will get a situation where children will live during the week with one parent but spend the weekends with the other parent and will often spend half the school holidays with each parent and there will be special arrangements for Christmas and birthdays."

Where the court becomes less flexible, however, is in cases where there is a high degree of acrimony between the separating couple. In those cases the court is unwilling to have children moving between the two parents too regularly because children are unsettled if parents can't agree on common routines and rules. On the face of it that sounds like a gift to a parent who doesn't want anything to do with their ex-partner; if they're difficult the court will limit access for the children's sake.

In a landmark case last June, Judge Inglis awarded shared custody to a Tauranga man and said the mother's "personal reluctance" or "personal agenda" about access shouldn't be enough to prevent both parents fulfilling their obligations as guardians.

Of the decision Mahony says: "That's a fair enough statement but generally speaking if a child is to flourish in an arrangement where there is frequent movement from one home to the other parents do have to get on reasonably well in that they have to support one another. Those arrangements don't work well if a child is aware of acrimony in the background or if a child is aware one parent is trying to derail the other parent." He says if one parent is obstructive the court may give custody to the most flexible parent, the one most likely to accommodate the other parent.

Mahony concedes the court doesn't do a very good job at enforcing its own court orders when a parent persistently fails to deliver children to the other parent. It can issue a warrant to have children collected by police but Mahony wants law similar to that recently introduced in Australia where the court can force a recalcitrant parent to undergo counselling and, failing that, be fined or jailed for flouting its orders.

And what about the question of allegations levelled by one parent against the other in custody disputes? Is justice being denied to men in the name of the child's welfare?

Mahony denies the definition of violence is too loose and is particularly adamant that despite being possible under the legislation, protection orders are not awarded for "slamming doors" alone although such a claim might be part of a series of allegations. Because the welfare of children was paramount there were likely to be cases where the police won't lay charges but an allegation is found to be "true" in the Family Court, he says. "There is a completely different process for gathering evidence and there is a much higher test of beyond reasonable doubt [in the criminal courts]. And there are no doubt cases where the police don't have enough evidence to bring a charge of male assaults female but it would nevertheless be imperative for the Family Court to make an order to provide protection for that person and the children of the family."

As for whether there is an inherent assumption women aren't violent — North & South knows of two cases where a woman admitted she hit her partner or, in one case, struck her partner in front of a court counsellor but escaped without any punishment —

Mahony says the court only reacts when allegations are formally presented to it. If men are abused by women then, he suggests, they need to overcome any shame or embarrassment and themselves apply for protection orders under the DVA.

Mahony has said Parliament has put "such a premium" on cases of domestic violence it has given the court no discretion at all to distinguish between different types of violence (such as the difference between a slap delivered after discovering infidelity and life-threatening violence) or to impose anything but supervised access unless it can be satisfied the child will be safe with a parent proved to be violent.

OF COURSE our morass of family law is the creation of Parliament and Mahony only interprets the will of our politicians. There has been spasmodic debate about these issues during this term of Parliament as two private members' bills sponsored by ACT MP Muriel Newman have been drawn from the parliamentary ballot. Her bill to open the Family Court to public scrutiny and limited media coverage, except in special circumstances where the judge opts to close the court, was thrown out by Parliament in February but it was Newman's failed Shared Parenting Bill, defeated in the House in mid 2000, that would have brought about the most substantive change.

Had the bill become law it would have made shared custody the norm, required corroboration for allegations and reversed the assumption introduced after the Bristol murders in Wanganui that a violent partner is probably a violent parent.

Motivated by the view that fatherlessness is the "most serious social syndrome we'll

face this century” Newman wants the Family Court’s default position to be shared parenting unless one parent can be proved unfit (using legal rules that better resemble those in the criminal court) or is somehow unable to fulfil their obligations. It’s not, as some critics portrayed it, a loony right-wing fad but is, in fact, the law in 48 American states and there is a well-organised and researched global shared parenting movement. Newman argues that when one parent can’t threaten the other with “taking away the kids” disputes are much less acrimonious and optimistically suggests both parents are able to put differences aside and start to work together for the good of the children. Although it might be assumed children are “shunted from pillar to post” under shared parenting, Newman says parents make dozens of different arrangements.

“I met a Dad who spent three years battling in the courts to get shared parenting. He employed three QCs, had seven court cases, spent over \$120,000 and now has the children for three days a week and lives just around the road from his ex-wife. And you just say shouldn’t that have happened of right? And what if he didn’t have the money? He would have just been another of the walking wounded. It shouldn’t be about resources, it should be about the right of a child to have a mum and dad.”

What was so wrong with the bill that the government wouldn’t even send it to select committee? After all, the idea that both parents should automatically be considered equal custodians seems like a perfectly reasonable one? Attorney General Margaret Wilson told the House during the debate in May 2000 that the bill assumed separating parents could reach agreement when, clearly, that hadn’t been the case in the past. In other words she disagreed with Newman’s idea that when the law said a 50/50 split was the starting point for negotiation, couples would calmly and rationally make agreements that involved both parents playing a significant role in a child’s life. There was also concern the bill focussed too much on parents’ rights when the whole thrust of family law internationally over the past few decades has been on the importance of children’s rights. There is also, it must be said, a degree of cynicism on the government benches and among National Party opposition MPs about Muriel Newman’s ability to turn the heart-tugging stories of the men’s groups into coherent legislation. “Muriel has been captured by the men’s groups,” says one opposition MP. Margaret Wilson said the government supported the bill’s principle — to improve the welfare of children — but said it believed it was time there was a comprehensive review of the 30-year-old Guardianship Act and practices of the Family Court. Adamant that this is a genuine review rather than a smokescreen designed to justify legislation already “in the bottom draw”, the government is expected to signal any law changes it will introduce later this year.

Meanwhile, Muriel Newman is redrafting her Shared Parenting Bill so it can be resubmitted to this year’s parliamentary ballot. She is considering an amendment to the Guardianship Act instead of a stand-alone bill.

All of which is unlikely to change much for fathers like Rob. He’s acutely aware he enjoys comparatively generous access to his two children compared with men subject to DVA protection orders — he meets their teachers, has access to school reports and photographs of milestones he’s unable to share — but still he knows as each fortnight passes his impact on their character and values fades a little more. He says he mostly feels he’s still a father, not “a visitor in their lives” — but only just.

#### \*\*\* John’s Story

For the first five months after John, a 45-year-old North Shore computer technician, left his wife in 1995, he visited her and his three-and-a-half year old daughter every day. “I was quite happy for our relationship and my support to the family to continue after I left, so I visited every day and supplied them with as much money as they needed. There were no substantial arguments of any sort I can remember in the six months after I left and in many ways I thought I’d done the right thing.” Then in early 1996 his wife, who was seeking custody of their daughter Angela, accused her former husband of sexually abusing their daughter and applied for a nonmolestation order (now called a protection order). His wife claimed Angela had told her “Daddy touches me on the wee wees” and “I don’t want Daddy to come here anymore.”

“My wife had a psychological history, had attempted suicide and been in institutions for months on end. I never held that against her but I think that was combined with the kind of books she was reading about children being sexually abused by their fathers all that stuff that was raging in the 80s. I remember seeing [the books] lying on the bed but I didn’t really pay any attention to them.” His wife had also loaned children’s

books with titles such as *What's Wrong With Bottoms* and was reading them to their daughter.

Doctors at Starship Hospital found no physical evidence of abuse and a 25-minute video interview with a specialist sexual abuse investigator yielded no allegations from Angela. A second 40-minute interview with a different interviewer a few weeks later, however, resulted in Angela giving an "accurate description of alleged oral sex by her father".

John says there are either innocent explanations for things described by his daughter or they must be scenarios gleaned from the books her mother was reading to her. When Angela said he touched her "wee wees" he believes she was referring to him checking if her nappies were wet and references she made to seeing her father's bottom may be explained by her seeing him injecting insulin he required for his diabetes into his buttocks.

Despite disagreement between psychologists about the reliability of the video evidence — and the fact the use of evidence from children as young as Angela is now largely

considered inadmissible — and the police decision not to lay criminal charges, the Family Court ruled John could only see his daughter with professional supervision.

A transcript of the judge's decision reveals he believed it was a case in which "no confident conclusion" could be reached but decided there was a "moderate element of risk" John had abused Angela and that she would be at risk in his care.

Repeated attempts to have the court order lifted so John might have something approaching a "normal relationship" with his daughter have been rebuffed.

"I went to court seven times, I even had an expert witness from America who specialised in my wife's disorder testify on my behalf. I did everything legally possible but no matter what I did I was shot down. My legal expenses have reached \$40,000 and I've got nothing for that \$40,000. I was no further ahead after two years of fighting than if I'd never bothered to defend it in the first place. I've got two hours supervised access a week."

John hasn't seen his daughter outside the confines of a supervised access centre for more than five years. He believes he's being punished for his ex-wife's "delicate psychological state" because in a 1997 decision the judge said if access was unsupervised that would so distress his ex-wife she would be unable to be an effective caregiver to the daughter.

"The impact on my relationship with my daughter has been substantial. We had a very close relationship, she was my first child and I was very interactive with her. Pretty much all of that is gone now. Parental alienation has set in and I think it's got worse as time has gone on. I believe my daughter has been severely damaged, not only because she now believes she was sexually abused, but by not having access to both parents."

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#### Brian's Story

When Brian was served with a protection order under the Domestic Violence Act for "emotionally and verbally" abusing his ex-girlfriend in 1997 he couldn't believe any judge would really prevent him from seeing their 18-month-old daughter because of it. So he ignored it. It's a decision he sorely regrets; he's seen his daughter for six hours in four years and she now probably calls his ex-girlfriend's new husband "Daddy". A Wellington salesman turned consultant to men and women embroiled in Family Court cases, Brian began a relationship with Diane in 1993 although they lived separately. Their daughter was born two years later and although she spent time with both parents, and was given her father's surname, the couple continued to live apart. When he ended the relationship in 1997 Diane filed an application for a protection order. In her affidavit sighted by North & South she alleged there was "physical violence from time to time" but makes it clear her main reason for applying for the order was the "emotional and verbal abuse" she alleges she suffered at his hands.

In her affidavit she claimed Brian had "mood swings and can be very manipulative. I believe he plays mind games with me. He also swings between being very angry and aggressive and turning to being romantic. The changes can happen very quickly." Included in the affidavit were claims Brian kicked, punched and broke a chair over his then 13-year-old son from a previous relationship and the partner he had before Diane. Neither of these claims were backed up with statements by his son and former partner and both later told the court those claims were entirely untrue. The fact Brian had

volunteered to do a Living Without Violence programme after it was suggested by a counsellor, was cited as proof he had in fact been violent.

“I entered into the Living Without Violence programme because I agreed I had been [psychologically] abusive as the relationship broke down. I became frantic when I was told she was seeing someone else and I thought I’d lose contact with my daughter. But I absolutely wasn’t violent. I never hit her. I never did any violent act against her.”

Because the protection order was not defended within three months it automatically became permanent. In the first few months it was in place Brian was arrested and charged with breaching a protection order by driving past Diane’s house. He spent a night in the Porirua police cells and, despite the advice of his lawyer, pleaded not guilty to the charge in court. Eight months later, after providing irrefutable records he was at work at the time of the alleged incident he was found not guilty.

Brian says his solicitor advised him not to apply for access while his daughter was so young as it would “do no good” but when his daughter was four in 1999 he filed an application for access and was awarded 90 minutes a fortnight supervised by Barnados.

“Diane decided on some weekends she was busy or going away so the access wouldn’t happen and gradually it ended up being months between visits. That’s when I realised it was futile. I said ‘this is not doing my daughter any good to be reintroduced to me and then torn apart again.’ I said ‘this isn’t working’.”

He quit the supervised access programme after four months having seen his daughter three times. Brian’s case is complicated by the fact he was not living with Diane when their daughter was born so he has no rights as a legal guardian despite the fact he is listed on her birth certificate as the father and his daughter legally has his surname. That means since Brian last saw his daughter, and decided to concentrate on having the protection order withdrawn, Diane has remarried and moved to the South Island. He has no idea where she is, has no contact by phone, is unable to send birthday or Christmas presents and has no input into her schooling, diet or religious affiliation. His three children from his previous marriage aged 10 to 20 have been denied a relationship with their half-sister and she doesn’t know his family.

With the support of his new partner Katharine, a registered nurse who says Brian is a “hands-on, loving father” to his children and role model to her own nine-year-old son, he has filed an application for unsupervised access during school holidays. The Domestic Violence Act is, Brian says, a “fine piece of legislation” and he accepts there

should be some means for psychological abuse to be recognised, but there needs to be more careful scrutiny of such claims especially where custody of children is at issue.

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#### Duncan’s Story

In the seven years since Duncan split up with his first wife in 1994 it has been a battle of wills: he has been to court a staggering 50 times and has had warrants issued for the police to collect his two sons — and deliver them to him for scheduled access — 17 times.

Accused of sexually abusing their sons then aged 18 months and three-and-a-half when the marriage soured, it took police only a cursory examination of the allegations to decide there was nothing solid enough to put the 37-year-old Auckland engineer before a jury. But six years and \$80,000 later, Duncan is only beginning to have something resembling normal access to his sons.

“We’d been having marriage problems and seeing a marriage guidance counsellor when my wife decided she didn’t want to share custody of the children. She made these allegations and was completely supported by CYFS and counsellors. The whole industry thrives on it.”

Duncan defended the non-molestation order taken out against him and made a counter application for custody of his sons. Despite having no evidence except the word of his ex-wife — and fantastic sexual allegations against no fewer than eight male and female members of his family — Duncan was found to present an “unacceptable risk”.

For two years Duncan was only permitted to see his sons once a fortnight in a supervised access centre. His ex-wife repeatedly ignored the court’s order to deliver the boys for scheduled supervised access. The police were reluctant to get involved and Duncan went back to court 17 times in 12 months to apply for warrants for the children to be collected by force. His ex-wife was eventually charged with obstruction but was discharged without conviction.

Two years after the allegations were made the court finally ruled the boys should be in

Duncan's care from Friday until Sunday once a fortnight but he must be supervised by a member of his family and they're not permitted to stay overnight with his new family. Just toddlers when he last spent more than a few hours with them, his sons are now nine and 10. He has struggled to pay \$80,000 in costs (a sum that could have been much higher; he has represented himself in many of his 50 court appearances.) Fortunately he says his boys are "very adaptable" and have accepted they have "two different lives".

Despite his so-called rights as his sons' legal guardian under the Guardianship Act (a "worthless piece of paper") it rankles he has no say in decisions about their lives including where they go to school, what they eat and what sports they play. "It's too easy to benefit from false allegations," says Duncan, "I think the domestic violence legislation has thrown up a situation where allegations that would normally

have been made to the police — and subject to a proper investigation — are now made under the Domestic Violence Act because it's much easier to make allegations, they're not examined and the wife gets custody of the children. Any woman who has reasonable intelligence can hold the court to ransom. A woman has to really stuff up — or get bad legal advice — for custody not to go in her favour."

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Justice must not only be done, but must be seen to be done. By this standard, the Family Court is a nonstarter.

Unlike other Family Courts elsewhere, it lives behind a veil of secrecy that allows it to do whatever it likes in an unaccountable fashion.

Reporting of proceedings in the Family Court is heavily restricted by law. That law is also of uncertain bounds with the result that the publishers of organs such as this Journal wish to err on the side of avoiding legal action.

The current prosecution of Nick Smith MP and Radio New Zealand is likely to ensure that Family Court matters are never discussed on radio again, for example. This is hardly healthy in a free society.

Furthermore, for practical and budgetary reasons the only reporting of Family Court matters that does appear is the judgments of the Family Court Judges. As all litigators know, judgments bear varying degrees of connection with the matters argued. There are some ways of prising the lid open, however, on what actually goes on in the Family Court and what emerges is not pretty. Again, through the operation of the law, knowledge of these matters is limited to an inner circle and can be prevented from becoming a matter of public debate.

The first is disgruntled litigants. There is no area of law on which your editor receives so much, or indeed any, correspondence from litigants. Needless to say a high proportion are men who have formed the clear impression that at least some Judges are biased against them. These claims are simply dismissed out of hand by the family law lobby with insulting remarks. This will not do, for two very good reasons. The first is that some of these people are actually intelligent and articulate and mount rational criticisms of not just the Courts but also the legislation which the family law lobby simply ignores.

The writings of Stuart Birks in this Journal are a good example. Many of his criticisms are unanswerable, so the family law lobby just doesn't answer them. In some seminars your editor has attended it has been clear that family law practitioners and relevant officials in the Justice Department are simply unwilling or unable to engage in any rational analysis.

Secondly, it will not do because one of the objects of the Courts and legal system is to resolve disputes in a way that the losing party accepts and will live with. On this count the Family Court appears to be a failure. It is no use producing figures, as the Youth Court does, about how most litigants are satisfied. Most is not good enough.

The next source of information is non-family lawyers who have found themselves propelled into the Family Court by the ideologically driven provisions, of the Property (Relationships) Act 1976. This requires multi-million dollar tax, trust and company cases to start before Judges who in most cases are entirely unfitted by their practical and judicial experience to deal with them. To repeat what many of these practitioners say about their experiences in the Family Court would be to risk prosecution for the trumpedup offence (based on a clear misreading of s 9 of the Crimes Act 1961) of scandalising the Court. Again, these conversations are limited to private discussions between senior practitioners (and Judges), leaving the field clear for the family law lobby to go on publicly about the Family Court's high quality and reputation.

Finally, but still restricted by practicality and law to a small inner circle, are the cases that appear in the law reports on appeals, applications for judicial review and so on. The facts of *Rawlinson v Rice* [1998] 1 NZLR 454 (CA), for example, are hair-raising. They reflect extremely badly on both the Judge and senior counsel. It is difficult to imagine that if the victim had been a woman there

would not have been outcry from the usual legal lobbies and a press campaign for the dismissal of the Judge. Far from obtaining any satisfaction from the Principal Family Court Judge or the Attorney-General, the litigant had to embark upon legal action. The response has been to introduce legislation immunising from suit District Court Judges who act in flagrant disregard for their legal powers.

Likewise *X v Y* [2003] 3 NZLR 261 was only one of several such cases last year in which the High Court stamped on what appeared to be routine practice in the Family Court in breach of basic standards of natural justice.

The response of the family law lobby to having standards of natural justice imposed on them is to agitate for a separate appeals system so that the whole process can be secretive, unaccountable and idiosyncratic.

Priestley J as a practitioner was a vigorous supporter of such a move and in his swearing-in speech His Honour set out to defend the Family Court against accusations that it was not a real Court dealing with real law. He achieved the opposite by describing the Court in terms that made it sound more like a Messianic social work agency than a Court of law.

The prosecution of a member of Parliament in circumstances that make it difficult for the public to judge the facts for themselves will do nothing to enhance the reputation of the Family Court. Much of the comment amongst those privileged to know about these things misses the point. The issue is not whether what Nick Smith said was right but whether he should have a right to say it.

There are some good and thoughtful Family Court Judges. Luckily, the Attorney-General has picked one of them to be the new Principal Family Court Judge. He has much work to do.

The Family Court is back in the headlines again with demonstrations outside the homes of Family Court Judges and, significantly, certain lawyers, and with a highly critical television programme on TV3. The public complaints mostly concern parenting of children. More quietly, tax, commercial, trust and company lawyers who have been forced into the Family Court for the first time by the ill-considered Property (Relationships) Act 1976 record their horror at both the process and the inability of many of the Judges to deal with the issues involved.

The status quo is defended in the corridors of power and within the profession largely by a group whose smugness, complacency and prejudice was well illustrated on the TV3 programme.

There is no room for complacency, in view of some simple facts:

in no other area of law, not even criminal, are so many dissatisfied customers moved to wage campaigns against the Court;

in no other area of law are there so many reported cases of Judges acting in flagrant disregard for statutory limitations on their powers or the principles of natural justice;

it is no secret that it is the poor performance of large numbers of family (and criminal) lawyers which is the driving force behind proposals for compulsory continuing professional development.

The campaign has taken the form of a campaign about sexism and anti-male attitudes. No doubt there are some around. But your editor has seen plenty of cases (mercifully at second hand) of judicial and professional incompetence of which women have also been the victims. The facts of life just tend to mean that the victims are usually men. But several complaints are routine and are brought by women as well as men.

One of the most common is where one party takes a child to another part of the country, or has voluntarily been given the child by the other party for a period for some reason. The Court appears not to have the wit to realise that in this situation one party has all the cards and the other none. Attempts at negotiation and mediation are therefore fatuous. Attempts to conduct prolonged interlocutory procedures such as conferencing and settling of issues simply provide opportunity for the party in possession of the child to drag matters out by failing to prepare/attend etc. After four or five years of this (and enormous expense on the part of the party trying to get something done), the Court announces that the child has now been with that party for so long that it would be disruptive to move it. To suggest, as Judith Surgenor did, that someone driven to protest by years of this sort of thing probably wouldn't be a good parent anyway tells us more about the person speaking than anything else.

The next problem is with a breed of family lawyers who believe that far from avoiding conflict the best tactic is to up the ante and the temperature. Your editor has seen cases where routine and neutrally worded applications (eg in one case simply for a DNA test to establish paternity) are responded to by statements of defence filed by lawyers consisting of vituperative and completely irrelevant attacks on the character of the applicant. In every town there appears to be at least one family lawyer well known for winning cases by browbeating, intimidating and harassing the opposite party and lawyer and lying to the Court but the other lawyers are always too wet to make complaints to the District Law Society, or even to acknowledge what they told their client when the client makes a complaint.

Underlying many of the complaints is simple maladministration, parties not being informed of hearing dates or orders against them, timetables set and not enforced, hearings constantly adjourned far into the future and Judges imposing complex procedures on parties who don't want them. (Maori in particular complain about being made to take part in administratively complex whanau conferences that they never asked for.)

It cannot be said that the Principal Family Court Judge has done anything to help by beating the tired old drum of making the Bench more representative of the community. This is a heresy in jurisprudential terms and in a Court where a Bench always consists of a single Judge it raises great uncertainty about what the Judge is supposed to be there for.

In fact it is interesting to analyse what both the Principal Family Court Judge and Principal Youth Court Judge have had to say in recent months. These two Courts are based on the un-courtlike principle that they can produce practical solutions to peoples' lives and sort them out. Inevitably, they start to take on the attitudes of a social work agency and when it becomes clear that the social problems they are wrestling with will not go away they start publicly to campaign for changes that will enable them to do their job better.

The truth however, is that they should not be doing that job at all. The role of Courts is to settle disputes as to legal rights, not interests. Once the legal rights have been demarcated the parties can negotiate over them in other ways and other parties will be saved going to Court at all. If the law is emptied of content and Courts come to see themselves as solvers of practical problems then litigation can only increase and the rule of law come under threat. Rule by Judges is not the rule of law.

The current Australian moves show the correct direction. The Family Court should be restricted to deciding issues of law, Judges should attain some humility as to their role and their ability to sort out the world's problems. If this is not done the effects of current controversy over the Family Court will come to corrode the legal system as a whole. 0

Peter Zohrab, Wellington, Looks for what lies beneath the conflicts

Some people were surprised when fathers started picketing the houses of Family Court lawyers, psychologists and Judges, but this was, in part, a reaction to the conflicts of interest that affect all professions in New Zealand, including those three. The two main conflicts involve women who see their careers and/or relationships as (in part) a way of pursuing feminist goals, and men who see their careers and/or relationships as dependent on not upsetting such women, which leads them to reinterpret issues in a feminism-compatible way. The personal is political.

Historically, this started with a conflict between the interests of separate groups. The family was a strong institution that stood between the individual and governmental and other organisations. Like all institutions, the family needed leadership, and this was provided by the eldest male. Feminists manage to persuade a large proportion of society that these males were affected by a conflict of interest which was detrimental to the interests of females, and that the solution was to move towards a model involving "equality" - later, this often became "equity", and then sometimes "girl power".

However, feminists themselves have been affected by a conflict of interest, as a result of the fact that they have been involved in political activism over many decades. They have claimed victimhood for women and have often acted to suppress attempts to disclose the male victimhood which arguably existed (and still exists) - even under the patriarchal model. They have clearly seen that any societal acceptance of a victim-role for men would undermine the case for female victimhood that feminists have been building up.

A Court of Law would not simply accept one party's bald assertion that that party's goal is equality or equity between the parties, and then deny the other party a say in the determination of what that equality or equity might, in practice, involve - yet that is the way the Law Society, the Institute of Judicial Studies; law schools, law journals and the vast majority of individual lawyers appear to behave in relation to feminism. Natural justice is absent.

Wendy Davis, "Gender bias, fathers' rights, domestic violence, and the Family Court" (2004) 4 BFLJ 299 exemplifies this point: the excerpt from it which was reproduced in a large, bolded and italicised font and placed in a box for emphasis has nothing to do with the Family Court or the law as it is today, but a lot to do with political ideology, unsupported by evidence: "Gender bias can prejudice both women and men, but it is not symmetrical. Unlike gender bias against men, gender bias against women occurs in the context of women's generally disadvantaged position in society and, historically, under the law". In a journal purportedly about Family Law, was it appropriate that such a passage should appear, let alone be highlighted as the main message of the article? The word "law" occurs in this excerpt only in an historical context, which is irrelevant to an article about the law as it is today. The rest of the passage is a claim about women's allegedly disadvantaged position in society, which is a political, rather than a legal claim. Not only is it political, but it is ideological, because it relies on this catechism having been instilled into us with our mothers' milk, absolving the author and editor from the need to provide one shred of evidence, either for the claim about legal history or for the claim about women's current position. Legal issues involving sexual bias, fathers' rights, domestic violence and the Family Court can only be rationally discussed in a context free of the guilt-feelings which some expect males to feel with respect to historical or non-legal matters.

Moreover, the excerpt from Davis quoted above is incoherent and arguably false. It is incoherent to mention "women's generally disadvantaged position in society" without including the implied phrase "by comparison with men's position". It makes no sense to claim that women are disadvantaged without claiming that men are less disadvantaged, yet men are routinely not mentioned in such statements. If men were mentioned, that would open the door to asking what disadvantages men suffer from, such as life-span, conscription, workplace accidents, imprisonment rate, suicide rate, health care, and so on. In terms of legal history, as well, one might mention the ways in which women were free of many legal liabilities that men had to bear.

A good case could be made that men are and have been just as disadvantaged as women both under the law and generally in society. The interested reader is referred to my book, *Sex, Lies & Feminism* (see <http://equality.netfirms.com/contents.html>), and to the many other books and web pages on the subject. Moreover, the rise of the Men's/Fathers' Movement must surely be an indication that this particular emperor might have no clothes.

In a relatively informal setting such as the Family Court, (Bryant Family Models, Family Dispute Resolution and Family Law in Japan (19-950) 14 UCLA Pacific Basin LJ 1) the potential is for that mindset to prevail, even though the evidence is that feminism is really about women's perceived self-interest. All professionals involved are capable of being affected by some sort of political conflict of interest.

The Men's/Fathers' Movement has many legitimate grievances, and -in my view -they all result from this problem of conflict of interest, which operates when Parliament drafts relevant legislation and when public servants go about their business, just as much as when cases are decided by negotiation, by mediation, or in a Family Court hearing.

I do not offer a solution here. All I assert is that replacing one form of apparent bias with another form of apparent bias does not necessarily constitute progress.



# Editorial North & South

## All In The Family Court August 2003

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he most difficult letters I get are from the fathers. Angry, anguished, heart-broken, humiliated fathers, some of them sounding three parts mad.

Like the screaming dog that's been hit by the car and is in death-throes agony. You can feel the pain rising from the paper as they write of loss of love, lifestyle, self-respect and their heart's greatest desire — contact with their children.

These letters are difficult to deal with because on the one hand you wonder if these people are insane and on the other you observe they are clearly intelligent human beings: their letters are often well-crafted, perfectly spelt, the grammar is intact, they're erudite but they have a grief-stricken, hysterical edge as they beg for help.

The letters have one thing in common — they're all written about the Family Court and how their writers have been put through a great shredding machine within its walls. The letters have been coming for several years now and the names, ages and geography may change but their number and desperation doesn't. They are a family of faceless, lost fathers and I fear for them.

The Family Court. What a can of worms. What a secret society?

Who — that hasn't got a financial or emotional stake in its proceedings — really knows what goes on within. The law is insistent that no detail of any case within be reported. National MP Nick Smith knows that only too well now. He's awaiting prosecution for contempt of court for pleading in Parliament for the return of a Family Court-managed child to a couple of his constituents. No names were mentioned, no street, no community, when he made the heartfelt plea in Parliament, but down

rained the threats from on high.

What we do know about this invisible den of pain and anguish is that around 13,000 cases between warring former loving-ones are held to divvy up the kids each year. Anecdotal evidence suggests that where there is no accord among parties mothers who are not plainly dangerous almost invariably get custody.

A great dollop of taxpayers' money is invested in the process. ACT antagonist Muriel Newman last year managed to wrinkle out the scary statistic that New Zealand's most expensive Family Court case had cost nearly \$100,000 in legal aid fees, and climbing, as the case remained unresolved.

In the year to May 2002 \$33 million was paid in legal aid to lawyers (at up to \$140 an hour) in Family Court cases — about 40 per cent of all legal aid expenditure.

Silver-haired Judge Patrick Mahony is patriarch of this court which came to life in New Zealand in 1981. Unusually for the judiciary he from time to time gives interviews to defend his court against what he says are misleading claims by fathers' groups. He insists the court is not biased against men, how could it be, many of its judges are men — and they simply heed the law's direction to award custody to the most able parent regardless of gender. He repeats the mantra that family law is created by Parliament and he and others only interpret the will of our politicians.

What he doesn't reveal is why the Family Court doesn't keep statistics any more about who gets custody in all proceedings. This regular data collection was snuffed out in the early 90s.

Why? Perhaps because it made stark and unpalatable reading?

Because of the rising clamour of largely-but-not-totally-male complaint, the government recently had the Law Commission look over the Family Court. The resulting *Dispute Resolution In The Family Court* report made 135 suggestions amounting to a business-pretty-much-as-usual whitewash.

There was a significant plea for more money to enable the court to do its job more quickly and efficiently and to improve staff training to avoid perceptions it is biased.

Then the government's curious Care Of Children Bill was introduced to Parliament on June 26. It's a flop that continues to cause a flap. It proposes publication of Family Court proceedings will be relaxed (the suggestion seems to be that media will get suitably censored documents at the court's will), that the Family Court will get more power to enforce its orders and — the knife turner for all those already grief-stricken dads — parents can appoint same sex partners as guardians. So while

so many biological dads aren't allowed to be fully functioning dads through order of the Family Court, now the government proposes women can become dads. This reads like some advance case of hysteria. Is there any hope for the lost fathers?

There's a small chink of light. Parliament's justice and electoral select committee begins hearing submissions on the Care Of Children Bill in late July. ACT's Muriel Newman will sit on that committee and is preparing a supplementary order paper supporting the introduction of shared parenting (as the Family Court's automatic default position) and to open up the Family Court. If the committee is satisfied the current bill is wanting it can recommend change. Concurrently there seems to

be a heightened level of concern in many corners of the Parliament that the Family Court is in need of reform.

Newman has walked this path before, in 2000 and 2001, with two private member's bills. Then Labour convinced the smaller parties not to support the bills because their own legislation addressing these concerns would be coming. That legislation is the Care Of Children Bill and it does no such thing.

There's a strangely curious fact here too about the three people steering this unusual bill to this point: neither Minister of Courts Margaret Wilson, associate justice minister Lianne Dalziel nor justice and electoral select committee chairman Tim Barnett have children.

Muriel Newman continues her longtime call for our-Family Court to follow the Australian experience. When public and media were granted entry there in the '80s, cases reaching court plummeted. Opened to scrutiny, families pretty damn quickly found a way to mediate their way out of post-marital problems and legal aid-sponsored appeals dropped away significantly.

Meanwhile the letters keep coming. I continue to hear weekly from the men and increasingly now women (usually disenfranchised grandmothers) who are the grievously wounded survivors of our Family Court.

The overpowering thought I'm left with is that perfectly normal, once rational people are quite capable of doing terrible things — possibly even murder — because of what they tell me this court has done to them.

And we mustn't think it couldn't happen. It did as recently as three years ago when a Stoke women took her life and those of her three children because of frustration over the Family Court.

Court struggles to stand tall in a community where family matters. By Terry Carson an Auckland Legal Worker  
NZ Herald 2007

‘The Family Court seems often to operate in a moral vacuum.’

Nowhere is this more evident than in the Family Court’s property relationship jurisdiction. It is ironic that if one enters into a business partnership with a total stranger, the law requires the partners to act towards each other with the utmost good faith and a civil court will enforce that requirement.

However, one can lie, cheat and betray a spouse, civil union or de facto partner and the Family Court usually will order the payment of half the family wealth to the offending partner without making any moral judgement.

Indeed, if the other partner brought a house or more wealth into the relationship at the outset, the effect of the law means the Family Court can richly reward a partner whose actions may have been morally reprehensible and have destroyed their family.

It has been legally fashionable during the past 40 years to pretend that conduct does not matter in family relationship breakdowns and that it always takes two people to make or break a relationship.

But the social expectation that people in a committed relationship will behave with some degree of decency or loyalty towards one another, has been deeply ingrained in our society for more than 1000 years.

Individuals who have seen their families destroyed and homes lost through the selfish behaviour of a partner, find no consolation in the lack of interest the Family Court often displays to their circumstances. This comment is not an adverse reflection on judges, it is simply how the law operates.

Often in the Family Court litigants try to raise issues that have caused them considerable upset in their relationship breakdown, only to be told they have no relevance in law.

Sometimes, they are told in an unintentionally but nevertheless patronising manner, they should only focus on their future. Important personal issues are left unresolved for these people. They see the Family Court as having failed them.

While much of our family law legislation continues to lack any connection with the values still held in most parts of our community, the Family Court is likely to continue to struggle to attain the respect it should have.

***Judicial "Activism" - Altering the meanings of words to subvert legislation*****THE PRIMARY CARETAKER THEORY Backsliding To The "Tender Years" Doctrine**

This article shows how USA judges have - in their own minds - altered the meanings of words, to allow themselves to continue to place children with their mothers (except where this would involve extreme danger to the child). This is even in the face of increasing strident legislation requiring them to make judgements in the interests of the particular children, taking into account the situations of their parents. These judges (not all of them) are simply weaselling out of performing their job and taking an easy path out to making judgements.

The exact legislation is different in NZ and in NZ there has not been as many new laws enacted, to try to get judges to actually evaluate the environments around the children, before making their judgement. However, the degree of resilience of NZ judges, at resisting the clearly communicated legislation, is similar to the USA.

The article below shows the history of new legislation and the judges rationale for ignoring the legislation and the games played with words, to let the judges, in their own minds, carry on with business as usual.

This scenario, where judges personal values usurp their "professional responsibilities" easily occurs in family matters, where a large amount of the issue relates to values. The NZ legislation is rather silent on values. The impact of these values issues does not show clearly in judgements (in the absence of also seeing affidavits), so the normal legal feedback process (appeals and public access to judgements) essentially fail to work in the "family law" domain.

Legislation does not have to be silent on values, for example the Contraception, Sterilisation, and Abortion Act 1977 requires a medical doctor who cannot countenance abortion as a form of birth control, must in good time, pass on a woman victim of sexual violation requesting a non-medical abortion to another doctor, who can then certify the need for an abortion. An extract from this Act, is in the next section of this Appendix.

By Ronald K. Henry  
Washington, D.C.

Although the "tender years" doctrine of maternal preference has been widely repudiated by statute and case law, old prejudices die slowly. The Gender Bias Commissions of each state in which a report has been presented have acknowledged that bias continues to taint custody decisions. As overt bias becomes increasingly unacceptable, we must guard against reformulations that merely pour old beer into new bottles.

Origins and Purpose of the "Primary Caretaker" Theory In *J.B. v. A.B.*, 242 S.E.2d 248 (W. Va. 1978), Justice Richard Neely freely acknowledged the maternal preference bias of his Court in the following terms:

We reject this [father's] argument as it violates our rule that a mother is the natural custodian of children of tender years.

\* \* \*

[The Court] rejects any rule which makes the award of custody dependent upon relative degrees of parental competence rather than the simple issue of whether the mother is unfit.

\* \* \*

[B]ehavioral science is yet so inexact that we are clearly justified in resolving certain custody questions on the basis of the prevailing cultural attitudes which give preference to the mother as custodian of young children. *Id.* at 251-52, 255 (emphasis added).

*J.B. v. A.B.* was so openly biased that it helped to accelerate the end of its own era. In 1980, the West Virginia legislature statutorily abrogated Justice Neely's maternal preference. W. Va. Code 48-2-15 (1980). As investigators and Gender Bias Commissions across the country have often found, however, bias may simply change its form rather than disappear. Justice Neely's rejoinder, *Garska v. McCoy*, 278 S.E.2d 357 (W. Va. 1981) was issued the following year:

[This case] squarely presents the issue of the proper interaction between the 1980 legislative amendment to W. Va.

\* \* \*

While in J.B. v. A.B., *supra*, we expressed ourselves in terms of the traditional maternal preference, the Legislature has instructed us that such a gender based standard is unacceptable. . . .

\* \* \*

Consequently, all of the principles enunciated in J.B. v. A.B., supra, are reaffirmed today except that wherever the words "mother," "maternal," or "maternal preference" are used in that case, some variation of the term "primary caretaker parent," as defined by this case should be substituted. Id. at 358, 361, and 363 (emphasis added).

Thus was the "primary caretaker" doctrine born. Let us be as plain, concise, and honest as was Justice Neely. The "primary caretaker" theory is first, foremost, and always a change-of-name device designed to maximize the number of cases in which the Court will be compelled to preserve the bias of maternal preference and award sole custody to the mother.

### **The Systematic and Purposeful Bias of the Primary Caretaker Theory**

The phrase "primary caretaker" is a warm, fuzzy term with a superficial appeal. Like all legal terms, however, the substance is in the definition provided for the term. Every definition which has been put forward for this term has systematically and purposefully counted and recounted the types of tasks mothers most often perform while systematically and purposefully excluding the types of nurturing fathers most often perform. No effort is made to hide the bias.

In some definitions, the very first credit on the list of factors to be considered goes to that parent, regardless of gender, "who has devoted significantly greater time and effort than the other in . . . breastfeeding." **1** The definitions often do not limit how far forward in time credit is to be extended for having performed such services in infancy. While the historic role of breastfeeder certainly should have little relevance to the custody of an adolescent who is contemplating the merits of rival street gangs, the more fundamental problem is the exclusion of consideration for the father's efforts and involvement throughout the child's life. No one seriously disputes the role of father absence in street gang formation, teenage pregnancy, and other pathologies yet the "primary caretaker" theory remains fixated on "mothering" and ignores "fathering."

Even on tasks where simple physical labor is involved, the "primary caretaker" theory aggressively asserts that what traditionalists called "women's work" is meritorious while "men's work" is irrelevant. The typical "primary caretaker" definition gives credit for shopping but denies credit for earning the money which permits the shopping. Credit is given for laundering the little league uniform but not for developing the interest in baseball or providing a role model in settings outside the home; for vacuuming the bedroom floors but not for cutting the grass or shovelling the snow; and for chauffeuring the children but not for commuting to work or maintaining the car.

Generally, the items which are counted in accumulating "primary caretaker" points are not matters of supreme difficulty or matters where abilities are differentially distributed. For example, the usual definition gives points for "planning and preparing meals." In our house, the seven-year-old loves canned spaghetti in "ABC" shapes and hates "Ninja Turtle" shapes, the five-year-old has precisely reversed preferences, and the two-year-old can fingerpaint equally well with either. To establish a custody preference on the basis of opened-can counts is an affront to all parents and hardly squares with our understanding that many women entered the paid workforce precisely because they were stunted by the mindless tasks of daily child care.

Most unreasonable is the "primary caretaker" theory's contempt for paid work. Time spent shopping counts; paid work does not. Often, grocery shopping, clothes shopping, and other shopping are counted separately. A single afternoon of shopping can be counted several times over but paid work is the only thing that permits the shopping. Who is really providing the child care?

Work is devotion, sacrifice, nurturance. . . . Work is parenting. It is obscene to say that spending is nurturance while earning is mere heartless, transferrable cash. I don't know any parents who are incapable of spending, but many are incapable of earning. Between a spending specialist and an earning specialist, which is the better caregiver?

In any two-adult household, there is a division of the tasks necessary to simply carry on with life even when no children are present. Cooking, cleaning and shopping are not counted as child care in the childless household any more than paid work, yard maintenance and home repairs are so counted. The nature of these tasks does not change with the introduction of children. Instead, all of the previously performed tasks -- specifically including paid work -- collectively support the child's environment. **2** What changes with the arrival of children is the commencement of the child's need to develop a relationship with both parents and the research shows that "fathers spend just as much time in primary interaction as do mothers." **3** The gender bias inherent in the "primary caretaker" theory lies in its insistence that the

The biased selection of factors deemed worthy of credit under the "primary caretaker" theory is not the only flaw in the theory. Even if it was possible to remove the gender bias from the selection of "primary caretaker" factors, the theory still suffers from the fact that its "freeze frame" analysis of who-did-what during the marriage ignores the reality that children's needs change. The best breastfeeder may be a lousy soccer coach, math tutor, or spaghetti can opener.

The historical division of labor during a marriage also says nothing about the abilities of the parents and their actual behavior either before or after the marriage. Just as Mom and Dad had to fend for themselves before the marriage, so also will they be compelled to fend for themselves after the divorce. The "primary caretaker" father will have to get a job. The "wage slave" mother will have to cook more meals and wash her own laundry. Similarly, each will have to provide for the needs of the children during their periods of residence. We know this is necessary and we know that it happens even in cases of the minimalist, "standard" visitation order.

The allocation of tasks that existed during the marriage necessarily must change upon divorce. The agreed specialization of labor during the joint enterprise of marriage can not continue after divorce. Each former spouse will have to perform the full range of tasks and the difficulties encountered by the former full time homemaker who must now learn to earn a wage have been a central concern of feminists. The "primary caretaker" theory, with its imposition of single parent burdens upon the spouse least able to cope with the need for earning a living is thus tangibly damaging to the very class that its bias aims to aid. **4** As a growing number of leading feminists have come to understand:

Shared parenting is not only fair to men and to children, it is the best option for women. After observing women's rights and responsibilities for more than a quarter-century of feminist activism, I conclude that shared parenting is great for women, giving time and opportunity for female parents to pursue education, training, jobs, careers, professions and leisure.

There is nothing scientific, logical or rational to excluding the men, and forever holding the women and children, as if in swaddling clothes themselves, in eternal loving bondage. Most of us have acknowledged that women can do everything that men can do. It is now time to acknowledge that men can do everything women can do. **5**

What your child and every child needs is the active, extended emotional and physical involvement of two parents, not a division of time based upon historical spaghetti can counts.

### **"Primary Caretaker" as a Prediction of the "Best Interests" of the Child"**

If the law supposes that," said Mr. Bumble, "the law is a ass, a idiot." Dickens, Oliver Twist, Chapter 10, page 51. The best defense of the "primary caretaker" theory was presented by Professor David L. Chambers in his article, "Rethinking the Substantive Rules for Custody Disputes in Divorce," 83 Mich. L. Rev. 477 (1984). **6** None of the articles since Chambers have matched his thorough analysis and many are bare claims for the mother's ownership and dominion over the child. Thus, Professor Mary Becker writes that:

I therefore suggest that more custody questions would be resolved correctly were we to defer to the decision of the mother with respect to the best custodial arrangement for her child as long as she is fit. **7**

Chambers, in contrast, labored to analyze mountains of research and more mountains have appeared since the publication of his article. Nothing before or since his article, however, shows that mothers are better parents or that either parent can not readily take on the tasks which had been allocated to the other parent during the marriage. What the research does show is that children suffer dire consequences when they are deprived of the active and continuous involvement of one of their parents. No one would suggest that the nation's gang members, drug addicts, pregnant teenagers and school dropouts are suffering from excessive fathering.

The interesting thing about the Chambers article is that, like a good mystery thriller, the suspense lasts until the end. As late as the 83rd page of the article, Chambers advises that "on the basis of the current empirical research alone, there is thus no solid foundation for concluding that children, even young children, will be typically better off if placed with their primary caretaker." Id. at 560. Ultimately, Chambers suggests a weak preference for the "primary caretaker" up to age five and no preference thereafter. Id. at 564.

Up to the concluding pages, Chambers could have gone either way. What tipped the balance? Chambers offers three answers:

1. "Research on the ties of children to secondary caretakers makes clear that such ties are typically stronger than once believed but leaves open the significant possibility that preserving the intimate interaction of the child with the primary caretaker is of greater importance to the child."

Id. at 561.

2. "[M]y earlier review suggests the probability that primary caretakers will suffer more emotionally than secondary caretakers when shifted into a mere visitor's role." Id. at 561 (emphasis added).

3. "A primary caretaker preference will reduce the incidence of litigation by letting one side know it is less likely to win. . . . Whoever bears the burden of proof will be denied custody in those cases, probably substantial in number, in which the Judge concludes at the end of all the evidence that she has no strong basis for believing that the children will do better in one setting than the other." Id. at 563 (emphasis added).

Of these three rationales, only the first is related to the well-being of the child and the real problem identified by social science researchers is precisely the opposite of what Chambers posits. It is the bond between the so-called "secondary caretaker" and the child that is most severely threatened by reduction to the "mere visitor's role" in a typical custody order. The short attention spans and memories of smaller children create the greatest need for frequent and continuing contact with both parents. See, e.g., "Children of Divorce: A Need for Guidelines" by Dr. áKen Magid and Dr. Parker Osborne, 20 Family Law Quarterly 331 (Fall 1986). Judicially imposed limitations on children's contact with the "secondary caretaker" are a cause of broken and weakened parent-child bonds. Id. The winner-loser outcomes that are sought by the "primary caretaker" theory are inconsistent with what we know about children's need for both parents. Child development specialists do not support "primary caretaker" driven custody determinations.

As to the second rationale, the claim that the "primary caretaker" will be emotionally deprived by a failure to obtain sole custody, it is only necessary to recall the fact that a child is not a toy. **8** The idea that custody should be governed by one parent's emotional "need" to possess and own the child is precisely contrary to the trend of the law over the past thirty years away from the notion that the child is the property of the custodial parent. In California, for example, a court considering an award of sole custody must examine:

*which parent is more likely to allow the child or children frequent and continuing contact with the non-custodial parent...* California Civil Code, Section 4600(b)(1).

Children want, love, and need two parents, not a rule that encourages hoarding. The third rationale's claim of virtue in bright-line rules limiting judges' discretion supports no particular choice of arbitrary criteria. **9** Awarding custody to the tallest parent is even easier to administer and probably no less rational. **10** Before imposing arbitrary rules, however, please remember that we are talking about the most personal and important decisions that will occur in most people's lives.

To state that some classes of citizens are "less likely to win" makes child custody decrees sound like a game, like blackjack, where ties go to the dealer. The parent-child relationship, however, is not a game and real human beings are entitled to a real day in court, not a crooked table. Cases of "ties" between equally fit parents are precisely the cases where we should not want a mechanical preference to pick a winner and a loser. Our real focus should be on developing a structure that demilitarizes divorce by getting past winner/loser dichotomies and by encouraging the maximum continued involvement of both parents.

## CONCLUSION

Children are born with two parents. Children want, love, and need two parents. In all but the vanishingly small number of pathological cases, the courts should strive to maximize the involvement of both parents. If distance or other factors prevent a substantially equal relationship with both parents, the preference should go to that parent who shows the greater willingness and ability to cooperate and nurture the other parent's relationship with the child. That's what being a caretaker is all about.

## Endnotes:

1. See, e.g., Proposal of Professor Carol Bruch.
2. Certainly, the introduction of children increases the total burden upon the household but these burdens do not make one adult or one subset of tasks inherently more worthy than the other. For every mother who reduces paid work because of a "devotion to the children," there is a father who becomes more of a wage slave because of that same devotion.
3. Robinson, "Caring for Kids", 11 Am. Demographics at 52 (July 1989). Additionally, with more two-career couples in today's population, the "primary caretaker" is likely to be the day care center. Does the "secondary caretaker" beat the "tertiary caretaker?" Unless disqualified from eligibility, the "primary caretaker" theory causes Mom and Dad both to lose custody to the nanny.
4. Single parent overload also shortchanges the children:

*"Children [living in single-parent households] receive two to three fewer hours of care per week from the custodial parent than do children in two-parent households. Children who live only with their mother, then, lose three hours of week of care from their mothers, plus a three hours a week of care by the absent father."*

Domestic Violence Act Submission 2008 \_\_\_\_\_ by Murray Bacon \_\_\_\_\_ revision 43  
*Id.*; Bianchi, "America's Children: Mixed Prospects", 45 Population Bulletin 1, 20-21 (June 1990) (primarily because of the absence of a second parent, children in single-parent families spend considerably less time in one-on-one activities with a parent than children in intact families).

5. Karen DeCrow, former President of the National Organization for Women, Syracuse News Times, January 5, 1994 (emphasis added).

6. I selected the Chambers article for this brief analysis both because it presents the most imposing defense of the "primary caretaker" theory and because of my admiration for his intellect.

7. "Judicial Discretion in Child Custody, The Wisdom of Solomon?", 81 Illinois Bar J. 650, 667 (December 1993). Becker actually goes as far as to argue that the usual "primary caretaker" definitions are not strong enough in their maternal bias. *Id.*

8. Chambers also candidly acknowledges every parent's pain "when shifted into a mere visitor's role." In another context, I am fascinated by this who-cares-most preference in litigated disputes. As a frequent litigator against the U.S. Government, I am sure that my oppressed clients always care more about the outcome of their cases than does the big bureaucratic government.

9. For a more extended reply to Chambers and other bright-line alternatives to the best-interests test, see Carl E. Schneider, "Discretion, Rules, and Law: Child Custody and the UMDA's Best-Interest Standard," 89 Mich. L. Rev. 2215 (Aug. 1991).

10. Using the same backward look at carefully selected factors, we can determine which parent has historically provided a better shoulder seat to watch parades, reached toys on high shelves, and provided greater vertical lift during "pick-me-up" games.

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Page Location: <http://www.deltabravo.net/custody/caretaker.htm>

## **Legislation can cover values Contraception & Abortion Act 1977 covering doctors values**

Even if a doctor has an ethical or religious objection to abortion or contraception, they are required by statute law to either offer advice and contraception or to forward the complainant to another doctor who will provide such services.

The Supervisory Committee is to ensure that the appointed Certifying Consultants do not hold views (or values) that would prevent them from offering abortions to women who desire them.

### **5 Supply of contraceptives to sexual violation complainants**

(1) Where any person makes a complaint of sexual violation to any member of the Police and that member, or any other member of the Police, calls a medical practitioner to examine the complainant, it shall be the duty of that medical practitioner (unless the complainant expresses a contrary wish or unless the medical practitioner is satisfied that the sexual violation did not involve the penetration of the complainant's genitalia by a penis)—

(a) To advise the complainant of a contraceptive precaution she may take in order to avoid the risk of pregnancy, and to supply to her or authorise the supply to her of any contraceptive for that purpose; or

(b) To advise her of her right to obtain such service from another medical practitioner or a family planning clinic.

(2) Without limiting subsection (1) of this section, where any patient complains of sexual violation to any medical practitioner (whether or not she also lays a complaint of sexual violation with the Police), it shall be the duty of that medical practitioner to comply with the terms of that subsection.

**(3) Without limiting anything in Part 4 of the Health Practitioners Competence Act 2003, every medical practitioner who fails to comply with subsection (1) or subsection (2) is guilty of professional misconduct, and must be dealt with under that Act accordingly.**

### **30 Supervisory Committee to set up and maintain list of certifying consultants**

(1) The Supervisory Committee shall set up and maintain a list of medical practitioners (in this Act termed certifying consultants) who may be called upon to consider cases referred to them by any medical practitioner and determine, in accordance with section 33 of this Act, whether to authorise an abortion.

.....

**(5) In addition, in making such appointments, the Supervisory Committee shall have regard to the desirability of appointing medical practitioners whose assessment of cases coming before them will not be coloured by views in relation to abortion generally that are incompatible with the tenor of this Act.**

**Without otherwise limiting the discretion of the Supervisory Committee in this regard, the following views shall be considered incompatible in that sense for the purposes of this subsection:**

**(a) That an abortion should not be performed in any circumstances:**

**(b) That the question of whether an abortion should or should not be performed in any case is entirely a matter for the woman and a doctor to decide.**



***Dr Sotirios Sarantakos: Domestic Violence Policies Review Wagga Wagga***

**Domestic Violence Policies:**

**Where Did We Go Wrong?**

**Sotirios Sarantakos**

**Abstract**

Although over the last 30 years conditions and policies surrounding domestic violence have improved significantly, the prevalence rate of violence at home has not decreased. Statistics still show a high incidence of DV, and the number of domestic violence apprehension orders and of victims of violence seeking assistance has increased significantly over the same period of time. This calls for a close investigation of the reasons for this trend, and a search for ways to improve the success of DV policies. This is the purpose of this paper. Reviewing national and international literature on this subject as well as using data gathered while working with violent families, including husbands, wives, children and in-laws of violent spouses, this paper will attempt to identify within the domain of DV areas of concern, and to suggest ways of adjusting and/or strengthening our policies in order to better control and prevent DV.

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## **Domestic Violence Policies:**

### **Where Did We Go Wrong?**

**Sotirios Sarantakos**

#### **Introduction**

Although over the last 30 years conditions and policies surrounding domestic violence have improved significantly, the prevalence rate of violence at home has not decreased. Statistics still show a high incidence of DV, and the number of domestic violence apprehension orders and of victims of violence seeking assistance has increased significantly over the same period of time. This calls for a close investigation of the reasons for this trend, and a search for ways to improve the success of DV policies. This is the purpose of this paper. Reviewing national and international literature on this subject as well as using data gathered while working with violent families, including husbands, wives, children and in-laws of violent spouses, this paper will attempt to identify within the domain of DV areas of concern, and to suggest ways of adjusting and/or strengthening our policies in order to better control and prevent DV.

The discussion that follows begins with the basic assumption that for DV policies to be successful, at least three fundamental preconditions must be met, namely, (a) that DV policies must focus on the real problem: hence, DV must be accurately defined; (b) that DV policies must address the real causes of the problem; hence the causes of DV must be validly determined; and (c) that the government must take an active, supportive and committing stance to this endeavour, and introduce and support effective DV policies. Considering this, it will be argued in this paper that in Australia, and in other countries, none of these preconditions are met fully.

More specifically, current policies (a) employ a definition of DV which is narrow, partial, selective, not representative and discriminatory, and is therefore out of focus; (b) such policies are employing a causation model that is biased and therefore fails to fully address the real causes of the problem; and (c) the government is misguided to support policies which do not address DV fully, lead to the establishment of a parasitic DV industry, and fail to control or prevent DV. Most of these points have already been debated in the national and international literature, but nevertheless, they have not been considered adequately in the context of DV policies.

## **A. Defining domestic violence**

As stated above, the first basic preconditions of an effective DV policy is that it must focus on the real problem and that it must employ a clear and precise definition of DV. It is argued here that this precondition is not met by the Australian DV policies, as we shall see next.

### *1. Selectivity vs representativeness*

To begin with, current definitions of violence are selective, biased, distorted, incorrect and unrepresentative, and misrepresent the nature, seriousness, composition and consequences of DV. This is evident in many ways, two of which will be addressed in this section.

a. The first sign of this deficiency in current policies is that they often consider DV to be identical or synonymous with wife abuse. Policy documents and government publications, in general, use, almost without exception, DV and wife abuse interchangeably. While the focus and title of such documents are on DV, their content and objectives are on wife abuse. Although the same documents state that DV includes child abuse and elder abuse, etc., the actual definition, analysis and evaluation of DV, as well as the direction and focus of relevant policies are related almost exclusively to wife abuse. This reduces the scope of DV, misplaces its focus, and misguides and misleads professionals and policy makers.

b. The other sign of this deficiency in current policies is that they rest almost exclusively on clinical data (data contained in criminal statistics, law enforcement statistics and hospital records), and not on survey data (which refer to all cases of DV - reported and unreported violence). Given that the part and type of DV contained in clinical data constitutes a small proportion of all acts of DV (according to some estimations as few as 3%), formal and official definitions of DV which are based on these data fail to consider the largest part of violent acts committed at home, and therefore, policies focusing on this type of DV miss the largest part of the problem and are therefore ineffective.

### *2. Describing symptoms*

Definitions of DV are inadequate also because they often are concerned more with the symptoms of the problem than with the problem itself. They usually refer to the final act and ignore the process that precedes the final violent act. Assaults which are committed during the fight, and ultimately lead to the "final blow", are usually not

considered. For government authorities, DV seems to be the black eye, the broken nose, etc., which are treated by the doctor, and which are registered in the police records; other forms of attacks and injuries sustained by the fighting parties prior to these injuries are of secondary (or no) importance.

This has obvious implications for social policy. If spouses assault each other extensively and intensively before the final blow is given; if they hurt each other in some way and to some extent; and if only the final act is registered and considered to be DV, the real problem that causes the fight, and which ultimately leads to the registered violent act is either ignored or is presented in a distorted manner. In this sense, policies address the effects or symptoms of the problem more than the problem itself! The chances of such policies to successfully control or prevent DV are very slim.

### *3. Severity vs intent*

Equally misleading and out of focus are definitions of DV when they judge violent acts according to the severity of the final act. Policies address violent acts that are thought to cause "serious damage", ignoring or trivialising violent acts that cause less, but serious, damage. The effectiveness of such a policy is questionable, for many reasons.

a. Apart from extreme cases, what is serious for spouses is difficult to determine: a slap may be trivial for one spouse, but very serious for another.

b. "Less serious" violent acts are by no means irrelevant, and are a part of DV. A punch that breaks two ribs may be more serious than the blow that breaks only one, but the latter is equally a part of the problem, and certainly by no means harmless or acceptable.

c. Disregarding, trivialising or tolerating less severe acts of violence results in some severe forms of violence remaining unregistered, permitted, and uncontrolled (if not encouraged!).

d. Concentrating on severe violence and ignoring less severe violence does not address the whole problem of violence. It is important to remember that violence is not only an act but also a process.

e. Concentrating on "severe" violence only ignores the fact that the primary intent of fighting spouses is not to *injure* their partner, ie to scratch his face, to break her ribs, or to cause a bleeding nose or a black eye, but to *hurt* the spouse. Their focus is on getting their way, winning the battle, and making the partner comply with their demands

rather than on causing physical injury. The degree of severity depends on the extent to which spouses feel it affected their status within the context of violence rather than on the objective judgment of the doctor or police officer. Policies concentrating on an objective measurement of the severity of violent acts miss the real essence of violence.

f. In many cases, spouses are hurt more by the *intent* of their partner to inflict injury on them, ie by *violating the bond of trust and love* that tie them together, and by the *embarrassment, disrespect, degrading, and humiliation* inherent in the partner's aggression, than by the resulting physical injury. Even when the spouse does not manage to injure the partner physically as much as (s)he had intended, this partner is hurt. Hence, whether the spouse's action hurts or not, and to what extent, depends primarily not on the physical injury (or its extent) but more so on his/her intent to hurt, and on the extent to which the other partner perceives this act as hurting. The meaning of violence is very important.

g. Failing to consider less severe attacks as violence and to treat them as such provides the weak partner with a hitting licence: weak spouses can assault their partner as much as they want, without being punished, as long as they do not inflict more injury than they receive. In simple terms, weak spouses can hit and hurt their partner, but strong spouses cannot.

**h.** Concentration on "severe" violence can potentially lead to retaliation on the part of the strong partner: the strong spouses who are punished for their violence, while their weak spouse gets away without punishment despite their violence, and is also protected and supported by the community and the state, may eventually retaliate and cause serious injury to their partner.

It is obvious from this that current policies which concentrate on the severity of the outcome and place little emphasis on less severe acts and on the intent to hurt and the process of violence, and which ignore the personal perception of the meaning and consequences of the actions of the partners can hardly be successful. Moreover, they may encourage the one spouse to be even more aggressive (because (s)he knows that (s)he can hit and still be protected by the authorities), and the other spouse to retaliate. This can hardly help to control and prevent DV. Any kind of violence must be condemned, prohibited and punished.

#### 4. Sexist definitions

The definition of DV employed by current policies fails to describe the real conditions of violence also because it is sexist: men are seen as the perpetrators and women as the victims of violence. It perceives DV as a manifestation of patriarchal values, a symptom of a social structure which is predominantly patriarchal and embedded in stereotyped male and female gender roles (Seth-Perdie, 1996) and of male supremacy (McGregor, 1990; Lazarus and McCarthy, 1990), a tool in the hands of men which is used 'to control female intimates' (Kurz, 1993:90) and not the result of individual failings of the relationship.

Further, domestic violence is seen as an expression of male power that is used by men to reproduce and maintain their relative superiority and authority over women (Adler, 1992:269), which is encouraged and expected by the society (Hopkins and McGregor, 1991); a reflection of system rules which assign men the right to own and control women (OSW, 1991:7), and a by-product of the system that holds women subordinate and oppressed (OSW, 1992:5).

Equally clear is this perception of DV in government publications. For instance, the report *Ending Domestic Violence?* published by the National Crime Prevention uses a definition of DV produced by the National Committee on Violence Against Women (NCP, 1999:6), which states that DV is "*Behaviour by the man, adopted to control his victim . . . which leaves a woman living in fear*"; a definition borrowed from the Office of the Status of Women (OSW, 1992:45). Although this report acknowledges the fact that "violence can be perpetrated by both men and women" (NCP, 1999:6), it still concludes that most victims of domestic violence are female, and therefore DV is the violence of husbands against their wives.

A similar paradigm is evident in statements by members of the government. Senator Joselyn Newman, for instance, speaking to the conference, *Domestic Violence Perpetrator Programs - Where to now?* on May 27, 1999, (Canberra, 26-29 May), described DV as a gender issue, and the perpetrator programs debated in that address were taken to refer exclusively to men. Further, policies and programs related to DV as well as services offered to victims of DV are geared toward women, excluding men by definition; and research grants are channelled exclusively to wife abuse.

In a nutshell, placing DV within a sexist framework misrepresents the problem and is theoretically, and morally unjustifiable and, hence, unacceptable. Above all, as a result of this, DV policies and programs are unable to address the real problem. No

wonder that attempts to control and prevent DV by focusing on wife abuse only, fail to produce the desired outcomes.

#### 5. *Assessing DV*

The definition of DV is biased also when violent acts are being assessed and investigated by the authorities. The following two examples are relevant to this point.

a. Almost without exception, violent attacks are assessed in terms of **who** commits them rather than **whether** they constitute violence. A slap administered by the husband is an assault; a slap inflicted by the wife is not. Husband-to-wife psychological abuse is a violent act, wife-to-husband psychological abuse is not a violent act. Although in legal terms this might not be true, in practice it is. Reports from many parts of the world show that violence is not considered by the authorities as serious when committed by the wife, but is considered as serious, when committed by the husband.

b. Sexist bias in assessing DV is also evident when considering the accounts of the spouses. Reports show that theories, programs and policies related to DV rest on accounts produced by women and not by men. In most cases, women's accounts of DV are the only source of truth and men's accounts are given little—if any—credibility, particularly when they are inconsistent with women's accounts. Further, counsellors advise that only wives' experiences are to be believed, and there is no need for further evidence on this: if a woman says she was assaulted by her husband, she is to be believed. Husbands' accounts supporting the opposite are disbelieved and mistrusted. For instance, when wife-to-husband assaults are being investigated, relevant information is collected by interviewing wives, despite the fact that they are the perpetrators of violence. Regardless of the circumstances, if the wife insists that she is the victim, the husband will be treated as the perpetrator, and action will be taken against him, even when she was the perpetrator.

Such dogmatic definitions of spouse roles in DV can hardly help establish fairness and justice in the area of DV. But apart from being unfair and unjust, and apart from aggravating the relationship and leading to further violence, this inhibits the efforts of the government and the community to control and prevent DV.

#### 6. *Victims and perpetrators*

The sexist framework of DV policies is most obvious when determining the identity of the perpetrators and victims of violence. As stated above, in theory and practice, by definition, men are the perpetrators and women the victims of violence

(Kurz, 1993:88, 99; Dobash and Dobash, 1979; Schechter, 1982; and Tierney, 1982; Adams, 1988:191; Grace, 1995:3; Seth-Perdie, 1996; Thorpe and Irwin, 1996:6). Simply, when husbands assault their wives they are the perpetrators, and when wives assault their spouse, husbands are still the perpetrators. When a man assaults his wife, the reaction of the community is "What kind of a man is he to beat up his wife?" When the wife assaults her husband, the reaction of the authorities is "What kind of a man is he to make his wife beat him?" In the words of a policy analyst for the Independent Women's Forum in Washington (Holmes, 1999) current theory and practice and particularly the feminist community assume that "domestic violence is fuelled by testosterone poisoning."

This dogmatic perception of perpetrators and victims was shown previously when discussing the sexist nature of DV, and is evident in other sources of relevant information. For instance, Senator Newman, in speaking to a conference on programs for perpetrators, and explaining how governments treat perpetrators of DV, stated: *"We need a greater coverage, we need to reach more men and we need to keep men in programs for long enough for them to change their attitudes and take responsibility for stopping their violence"*. Here it is taken for granted that "perpetrators" means "men".

A careful assessment of research evidence and statistical figures fails to support this taken-for-granted position on DV. On the contrary, it shows that women—not men—are in the majority among the perpetrators of family violence. Women are in the majority among elder abusers, child abusers, and child murderers and commit spouse abuse as frequently as men do. Below are a few examples.

- women commit a significant proportion of family murders. Data from the USA show that *"A third of family murders involved a female as the killer. In sibling murders, females were 15 percent of killers, and in murders of parents, 18 percent. (US Bureau of Crime and Statistics, 1994)*

- Wives commit 41% of spousal murders (*US Bureau of Crime and Statistics, 1994*). The way in which they execute their murderous activities often surpasses that of the most vicious killers: an Australian woman stabbed her husband 37 times, skinned him, cooked his head and served it to the children with vegetables and gravy. The reason for this was his decision to leave her.

- the majority of child abusers (60 percent) are women, except with regard to sexual abuse (DHHS, 1996).



- the majority of child murderers are women: according to reports on statistics from the USA, mothers commit 55 percent of all child murders (*US Bureau of Crime and Statistics, 1994*); mothers are also nine times more likely to kill their biological child than are fathers. And yet they are more likely to be excused than men. (The story of a mother who killed her eight children between 1949 and 1968 and was discovered in 1999 is an example (*Washington Post, 1999*). She received a mild sentence (20 years probation). The case of another mother who threw her child in a pond to die, is another example. She was not charged for her action.)

- the majority of elder abusers are women. This, as well as their predominance among child abusers, is justified by feminists by the fact that they are the main carers. Nevertheless, this does not negate the fact that they do commit these acts, when opportunity permits.

- women are more likely than men to use weapons in spousal violence (McLeod, 1984).

- women hit the first blow in higher proportions than men (States and Straus, 1990; Farrell, 1994).

- women are violent also in lesbian relationships, where they are reported to acknowledge DV in higher proportions (54 percent) than in heterosexual relationships (11 percent) (Farrell, 1994).

Beyond this, as several studies have demonstrated (see Archer, 2000; Brush, 1990; Fiebert, 1998; George, 1992; Sarantakos, 1996; 1997; 1998a; 1999; Scanzoni, 1978; Sorenson and Telles, 1991; Schulman, 1979; Straus, 1993a, 1993b, 1999; Tyree and Malone, 1991), wives assault their husband at rates that are equal to or even higher than the rates of the husbands, or at lower but still significant rates (Tjaden and Toennes, 1997). More specifically, Gelles and Straus produced findings relating to national surveys conducted in 1975 and 1985 showing that the rate of wife-to-husband assault was slightly higher than the rate of husband-to-wife assault; when considering reports of women only, the trend was the same: the overall rate of assaults by wives was 124 per 1000 and by husbands 122 per 1000; this was true for minor and severe assaults (Gelles, 1974; Gelles and Straus, 1988; Straus, 1993a; Straus and Gelles, 1986, 1990).

Further, the *British Crime Survey*, published in April 1999, demonstrated that husbands and wives assault each other in equal proportions (4.2%). This is the outcome also of an Australian study conducted by Bruce Heady, Dorothy Scott and David de Vaus just recently (1999). This study included a national sample of 1,643 respondents in

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relationships, and found that 4.7% of the respondents had been assaulted by their partner during the previous year. Moreover, the study reported that exactly the same percentage of men admitted assault (3.4%) as the number of women who reported being assaulted (3.7%). But more men claimed to be assaulted (5.7%) than women admitted assault (3.6%) (Kissane, 1999).

The Canadian study on married couples by Marilyn Kwong and Simor Fraser (Canadian Journal of Behavioural Sciences) is another example. This study found that 10.8% of men but 12.4% of women pushed, grabbed, threw objects at their spouses; 2.5% of men but 4.7% of women committed more serious acts of violence such as choking, kicking, or using weapons. Also, 52% of women and 62% of men reported that both partners were violent; violence was reported to have been initiated in 67% of cases by women and in 26% by men. Still, 3% of women and only .4% of men suffered an injury. The National Post (Canada) comments on this by saying that *"Our society seems to harbour an implicit acceptance of women's violence as relatively harmless";* and that *"the failure to acknowledge the possibility of women's violence ... jeopardises the credibility of all theory and research directed toward ending violence against women"*. (Evenson and Milstone, 1999; The Massachusetts News, 1999).

Similar results were reported by another Canadian study including dating couples conducted by Donald Sharpe and Janelle Taylor, from University of Regina and Wilfrid Laurier University. This study found that 39% of males and 26% of females surveyed reported to have suffered violence while on a date (Evenson and Milstone, 1999; The Massachusetts News, 1999). A final example of recent studies supporting equity in assaults between husbands and wives is one conducted by Terrie Moffitt, who studied 860 men and women, whom she has been following since their birth. The results indicate that wives hit their husbands at least as often as husbands hit their wives. (Young, 1999; Updike, 1999)

Despite the clear evidence that wives and husbands assault each other in equal proportions, critics point to a number of limitations to these trends. The most critical points are as follows: (a) Studies showing equal amounts of violence for husbands and wives use the Conflict Tactics Scale (CTS), which concentrates on single acts and ignores the context (Dobash et al, 1992:26). For this reason, issues of fear and control are not considered in the measurement of DV. (b) Violent acts counted through the CTS method are not the same; as Kurz (1993) put it, there is a difference between a woman's

biting and a man's kick or hit with a fist. (c) Men abuse their spouse to dominate and

control her, while women may hit in frustration, stress, fear or self-defence (James, 1996:122). And (d) Men's violence is more severe than women's violence. For these reasons, it is concluded that, as far as intent, frequency, severity and outcome of violence are concerned, men's violence is far more serious than women's violence, and this legitimises current social policies to set their direction and priority to be more concerned with men's violence against women than women's violence against men (James, 1996:125).

These arguments have been debated extensively in the family literature; their validity has been questioned on a variety of grounds. The most important are listed below:

a. Although the *context* of DV is very important and beyond contention, there is no evidence to prove that the context of husband abuse is any different from the context of wife abuse. Men and women are being abused under similar conditions, and in "contexts", which are as important for abused wives as they are for abused husbands

b. The point that violent acts vary between the spouses is correct but this does not necessarily mean that this therefore favours husbands. We are misled here to compare a strong husband with a weak wife, as if this is the only option. We seem to ignore the fact that there are many wives who are larger and stronger than their husband; and that there are husbands and wives who are equally strong. The fact is that wives abuse their husband when they are strong and they know that they are in a position to carry out the attack without the risk of being hit back by him. Husband abuse does not necessarily happen in families with strong husbands and weak wives, the same as wife abuse does not necessarily happen in families with strong wives and weak husbands. Most importantly, control and domination are more powerful than physical strength, and in many cases, women can control their husbands as much as husbands control their wives.

c. Wife-to-husband abuse is by no means insignificant or "not severe". As stated above, women use objects and weapons very successfully to assault their husband, and in 41 percent of the cases they do commit spouse murders.

d. The notion that men abuse to dominate and control the wife, while women abuse in frustration, stress, fear or self-defence is an ideological justification, and an excuse that has no empirical basis. Studies conducted by the author verified trends reported overseas which suggest that in the majority of cases abused husbands have no control over their life and are in the same predicament abused wives are.

e. A more serious point in this argumentation is that critics forget that DV is not just spouse abuse, but also elder abuse, child abuse and other forms of abuse. The argument regarding who is the perpetrator is constructed within the context of wife

abuse but is generalised to include all forms of DV. Hence, while spouse abuse permits some flexibility regarding who the primary abuser is, within the context of elder and child abuse the case it is clear that women are the perpetrators and not the victims (except for the female elderly victims).

f. Feminists perceive husband abuse as a part of wife abuse, and search for an explanation within the context of the latter. They fail to understand that husband abuse and wife abuse are two forms of violence occurring in two different contexts, where there is a domineering spouse (husband or wife) and when the conditions permit or even encourage violence. Power, control and dependence may be the justifying factors, however, these factors are not necessarily a privilege of the husbands. There are many relationships in which wives hold domestic power, who control their family and where husbands are the dependent spouse.

This demonstrates very clearly that husbands and wives are capable of hurting each other in equal amounts, and facts show that they do so; hence the notion that husbands are the perpetrators and women the victims is unfounded and unacceptable. Irrespective of the context in which such violent acts are committed and regardless of the seriousness of these assaults, the fact remains that women assault, abuse and even kill their husbands and other family members in significant proportions; and ignoring, trivialising or justifying their violence in any way does not help restore justice in troubled relationships or - more to the point - to control or prevent violence.

### *7. Domestic violence as physical violence*

A serious problem of the definition of DV is the tendency to refer primarily to physical violence and to partly ignore other types of violence. This is due to the fact that when defining or describing DV, reference is made to clinical data, figures from law enforcement statistics, criminal statistics or hospital reports, which refer almost exclusively to physical violence. Given that spouses only exceptionally seek protection or medical help for verbal, emotional or social abuse, non-physical violence is rarely registered and when it comes to the attention of the authorities it is either considered less significant or is used in a biased manner to explain, justify, or legitimate physical assaults.

For instance, while husband-to-wife emotional or verbal assault is considered a serious offence and constitutes DV, which can justify self-defence and even murder on

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the part of the wife, wife-to-husband emotional or verbal abuse is not considered important. On several occasions men have stated that reporting emotional, verbal or psychological abuse to the police or the courts is either not taken seriously or is

trivialised and considered as a joke. Moreover, it is not considered sufficient to justify self-defence against his wife as it is when the wife is the perpetrator.

And yet, non-physical violence is not only as harmful as physical violence, but can often be even more damaging than physical assaults (Berger, Fisher, and Rose, 1994), and it often is the avenue to physical violence. In most cases, physical violence is preceded by (or associated with) non-physical violence (Kasian and Painter, 1992; Stets, 1992; Tolman, 1995), and the former results from an unsuccessful resolution of non-physical violent acts. In this sense, concentrating on physical violence and neglecting other forms of violence results in a relative neglect of a large and significant part of DV, and one that is closely associated with the causes of the problem.

This has serious implications for social policy. In the first place, failing to see non-physical violence as a form of violence existing in its own right, and therefore to count it together with other forms of violence (eg in clinical data), misrepresents DV and offers a biased image of this problem. Apart from this, giving little attention to non-physical violence and practically accepting or even legitimating it aggravates violence and leads to more serious personal and family problems. And finally, understating the significance of non-physical violence shifts the focus of our policies away from the real problem and results in a less effective control of the problem.

#### *8. Domestic violence as self-defence*

Another way in which the definition of DV fails to describe the problem fully is the practice of considering women who assault their husband as acting in self-defence and to therefore perceive their assaults as constituting no violence. More specifically, it is argued that wives do not assault their husband unless they have to defend themselves or to prevent further damage (Wolfgang, 1957); they use violence against their husband as the last resort (Totman, 1978), they are usually subjected to violence for a number of years before they assault or kill their spouse (Browne, 1986; McCormick, 1976, quoted in Bauman, 1997), they act in response to learned helplessness, because they lose control of their suppressed rage, or to protect their mental health (Walker, 1979, 1984,

1989, 1990, 1993), and they cause far less damage to men than men do to women.

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Similar reasons have been presented in courts dealing with wives who killed their husbands (see Bradfield, 1998; O'Connor and Ferral, 1996; Hubble, 1997, 1999; Stubbs and Tolmie, 1995; Schneider, 1986; Faigman, 1986; McCarthy, 1994; McKinnon, 1982; Yeo, 1992, 1993; O'Connor and Fairall, 1996).

This is a well-known position, one that is supported by many theoreticians and

practitioners in the area of DV, and one that is difficult to hold, for the following reasons: (a) There is no empirical evidence showing conclusively that in all cases husband abuse is causally associated with self-defence. (b) Battered Woman Syndrome (BWS), which has been used as one of the most influential forces behind this thesis, is questionable on theoretical, ideological and methodological grounds (Faigman, 1986; Sheehy, et al. 1992; Schneider, 1980). Apart from this, most of the studies that support the notion of self-defence: (c) used battered women or husband killers as their informants, and are therefore not valid or representative; (d) investigate husband abuse within the framework of wife abuse, assuming that only abused wives batter their husbands; (e) use perpetrators of violence as their key informants; (f) produce findings which show that the proportions of wives who state that they abuse their husbands in self-defence is relatively low, that is, between 21 per cent and 41 per cent (Bauman, 1997; Fojtil, 1977-78; Pagelow, 1981; Saunders, 1988; 1986), suggesting that the remaining (largest) proportion of abusive women (up to 79 per cent) may not hit in self-defence; (g) employ a perspective which (as shown above) is by definition biased in favour of women, and does not offer an objective appreciation of the problem; and (h) concentrate primarily on delayed self-defence or past abuse, which in most cases is difficult to defend.

Further, there is strong empirical evidence showing that in a significant number of cases wives assault husbands who never assaulted them in the past (Straus, 1993a; Pearson, 1997a; 1997b; Sommer, 1994; Sommer, Barnes and Murray, 1992; Mann, 1989; McNeely and Robinson-Simpson, 1987; Sarantakos, 1996). Straus, for instance, retreating from his earlier position that husband abuse is the violence of self-defence (Gelles and Straus, 1988), in a more recent report (1993b:74) states that *"regardless of whether the analysis is based on all assaults or is focused on dangerous assaults, about as many women as men attacked spouses who had not hit them during the one-year*

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*referent period. This is inconsistent with the self-defence explanation for the high rate*

*of domestic assault by women."* Simply, wife-to-husband abuse is not always associated with prior aggression by the husband.

But there is more to it than this. For instance, a study of 272 respondents

including the abused husband, his wife, one of their children and the mother of the abusive wife (Sarantakos, 2001) found that only 12 percent of the abusive wives assaulted their husband in self-defence. Even abusive wives admit that they assaulted their husband for reasons other than self-defence. Other studies (Sarantakos, 1998; Stockdale, 1999) found that women assault their husband repeatedly over a long period of time. This is not consistent with the notion of self-defence: if the husband is so dominating and violent that the wife needs to defend herself against him, why doesn't he retaliate after he is assaulted by her? How can she continue assaulting him, day after day, or week after week, without being assaulted by him in return? Moreover, why does she strike—in most cases at least—the first and last blow? It was also found that in cases of husband abuse, it is the husband who leaves the abusive family and not the wife (as it would have been the case had she been the victim).

The truth is that there are families in which women assault their husband even when he never hit them in the past. In these cases, the victim is the husband, the perpetrator of DV is the wife, who is in control of her family and who therefore does not hit in self-defence. There are many cases of genuine wife-to-husband violence which do not fall within the parameters of the self-defence thesis. The research by the author, overseas studies, and the popular press offer numerous examples of this. For instance, a Darwin newspaper reported the story of a woman who apparently was assaulting her husband for several years. According to this report, the woman did not only assault the husband but also attacked the police officers who, in one violent incident, came to assist the husband. In response to this, a female police officer, defending herself, shot the abusive wife dead.

In another case a wife stabbed her husband after he brought her flowers. The reason: "He shouldn't have spent that money for flowers" (Fox News, 1999). The wife who skinned and cooked the husband, mentioned above, is another case. Yet another wife hit the husband, causing facial injuries requiring medical treatment. The reason: he allowed the son to use the family car without her permission; this resulted in a car accident that caused considerable car damage.

In a nutshell, accepting self-defence as a justification and legitimation (or rather excuse) of abuse by the wife is wrong, unfair and unjust, it misplaces government action and policy, and is not conducive to helping to control or prevent DV.

#### 9. *Domestic violence: Divisive polemic*



A final problem that affects the definition and perception of DV is the fact that these processes are biased by a divisive polemic where there is little real effort made to understand DV as a family problem, and to address it objectively and without bias and prejudice, with the intent to eliminate DV. In many cases, the goal of policies seems to be more to support women and put down men, than to join hands and fight the problem. Despite the strong support from a number of researchers and writers who raise these issues, we still remain within the domain of a notion of violence that is torn by hostilities and ideological controversies. It seems as if it is difficult for policy makers to understand that in order for our efforts to succeed we must begin to treat people, not husbands only; to work for equity and justice and not for empire building or ideological gains; and to work for the benefit of the families rather than of women only.

#### *10. Summary*

The discussion in this section suggests that theory, practice and policies perceive DV in a fragmented, biased, discriminatory and unrepresentative manner and are out of focus. While they intend to address DV they address wife abuse. And while they intend to address perpetrators of DV, they address perpetrators of wife abuse only, wrongly assuming that they are the only perpetrators of DV. Women who abuse their husbands, their children and their elderly parents are neither seen as perpetrators nor are they subjected to behaviour modification, anger treatment or relevant conditioning techniques, as are their male counterparts.

The obvious consequence of this is that our policies (a) can only offer temporary relief to one group of victims only (ie women); and (b) fail to control or prevent DV, and have no real effect on its prevalence, extent and intensity.

#### **B. What causes Domestic Violence**

As stated earlier, one of the preconditions for introducing successful DV policies is accurate knowledge of the factors that cause DV. It was stated also that our policies fail to consider adequately the factors which appear to cause this problem. The rationale of this argument will be explained below.

As we already know, the views about the real causes of DV vary; while some writers stress psychological causes others place more value on social, cultural and economic factors. Nevertheless, the dominant theory and philosophy behind our policies is that violence is caused by men, and therefore policies have to be geared towards punishing and conditioning men and protecting women. The National Crime Prevention



notes in the 1999 report *Ending Domestic Violence* (p 47) that "*some commonly agreed elements which should underpin community based approaches in Australia [are] the need for primacy of women's safety; that programs are based on a pro -feminist analysis of gender and power É [and] that systems are in place which ensure that men's programs are accountable to women's services and victims*".

In this document, the bias of DV policies and their dogmatic -dictatorial stance is so obvious that it does not deserve further comments. The DV industry has been highjacked by feminists, works for women only, and pays no attention to other forms of DV; instead it tries to ignore or trivialise their presence. The more general justification of this ideology rests on the theory of patriarchy, which assumes that power is in the hands of men, who have the right to dominate and oppress women.

Despite its popularity among radical feminists, this theory is unfounded, at least with regard to Australian families of the last forty years. The truth is that not all families are patriarchal: there is not a single study in the world which has proven that in advanced western post-war societies ALL families were or are now patriarchal. On the contrary, it has often been shown that the largest group of contemporary families are democratic, the second largest group of families are patriarchal and the third group of families are matriarchal. The study of the author which included more than one thousand respondents (Sarantakos, 2001, 2000) reported that only about thirty percent of the families could be termed patriarchal, over twenty percent were matriarchal and the remaining families were democratic. Put it differently, in about three quarters of Australian families the wife controls the family, either alone or together with her spouse. This is certainly not a characteristic of domestic patriarchy.

Following this, it is logically and methodologically wrong to assume that husbands are violent because as men they have the power to control women, simply because this is not correct: if power is the drive of violence, then violence should be as diverse as power, with wife abuse being evident in patriarchal families, husband abuse in matriarchal families, and mutual assault in democratic families. Hence, the notion

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that power is the drive of violence, that husbands have the power and therefore husbands are the villains has no empirical basis.

In this context, turning to our question why our policies are not as successful as one would have expected them to be, our answer is that these policies do not address the real causes of the problems. Arguing that DV is caused by men, and that women do not

contribute to the causation of this problem is against common practice, is incorrect and misrepresents reality. Obviously, fighting the wrong causes cannot have any effect on the problem.

### **C. The role of the state**

As argued above, the policies introduced by the government to control and prevent DV have failed to produce the intended results. There are many reasons for this but political correctness augmented by incorrect and biased expert advice are the most important. Alienating the women's movement is political suicide for any political party, particularly when there are experts that verify the soundness of current directions in this area. For as long as the experts perceive DV in a biased manner and justify it by using incorrect and unfounded explanations, government policies cannot help improve the situation. On the contrary, such policies inevitably lead to the creation of a strong DV infrastructure, dominated by biased ideologies and practices, which block the development of alternative avenues to treating DV, and which help maintain the status quo (and DV).

It goes without saying that if current conditions are maintained, the structure and process of DV will remain unchanged, and it is guaranteed that DV will neither be reduced nor controlled or prevented in the future. Infrastructures will be even strengthened, future "experts" of DV will be conditioned to understand and treat this problem in an even more rigid manner than is currently practised, and women and other victims of violence will continue being abused in the future as much as, if not more than, before. Hence, the only beneficiary from this enterprise is the DV industry. This will lead to a stronger institutionalisation of the problem, with the DV industry becoming more overpowering, more demanding and more self-serving, and with women and other victims of violence suffering as much as before. Even the state and the professionals will stand powerless and defenceless in front of the DV industry, being unable to influence the course, intensity, extent and outcomes of DV. Simply, for as

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long as policies are developed within current ideologies, theories and practices, any effort to fully control DV are doomed to fail.

### **D. Conclusion**

What is to be done to fully and adequately address the problem of DV? The answer to this question is by no means simple. However, considering the developments described above, one is bound to conclude

that the only form of intervention that could be promising and effective is one which perceives DV as a diverse and complex problem, a family problem and not a problem of one spouse only; one that accepts the presence of families with abusive husbands, families with abusive wives and families with both spouses being abusive to each other and to other family members. It should further acknowledge the fact that DV is more than the physical injury inflicted on the spouse, who can be either the wife or the husband or both. It should be a model that will encourage research in every aspect of the problem and one that will not employ a selective and biased perception of the problem.

More specifically, it is imperative that if DV is to be reduced, controlled and prevented, the following action must be considered:

1. Policies must be introduced which focus on the real problem and not on artificial constructs reflecting vested interests and biased ideologies.
2. Policies must address the real causes of DV, as identified by empirical evidence.
3. Policies must treat the problem and not its symptoms, and all types of violence not only violence against the wife.
4. The government must undertake rigorous research to create the knowledge that is required to introduce effective policies. This research must be informed by all theoretical perspectives and not by the feminist paradigm only.
5. The government must establish the parameters which will guarantee support and protection to all victims of violence without bias and prejudice.
6. The government must review practices and programs with the view of assuring that the diversity of DV is taken into consideration.
7. The administration of DV must be reconstructed to include equal representation of both sexes and of all interest groups, views and ideologies.

8. The government must do away with policies based on sexist, misandric, and discriminatory practices as well as anti-men propaganda, misleading statistics, and discriminatory policies.

9. The government must set in place mechanisms and structures to facilitate consciousness raising campaigns to encourage abused husbands to come forward and seek assistance, to promote supportive attitudes to husband abuse, and to introduce and/or further expand services for abused husbands (eg shelters, half-way houses, counselling services, etc.).

10. The government must put an end to divisive policies that turn women against men and parents against children, and introduce a policy that is based on a joint effort of men and women who would work together to end DV.

It is important to realise that the various types of DV are not mutually exclusive. The presence of high proportions of abused, victimised, raped and assaulted women does not necessarily negate the presence of high proportions of abused, victimised, assaulted and killed husbands. The presence and seriousness of the abused and battered husband must be acknowledged; and the abused and battered husband must be treated as seriously as the abused and battered wife.

Such an acknowledgment does not mean that our endeavour to control wife abuse must be given less attention. It means that it should not be considered as the only form of DV that deserves attention and support. It is imperative that we accept the fact that not only men but also women can be violent and abusive. Admitting the presence of abusive females does not negate the presence of abusive males; and caring for the victims of wife abuse does not imply that the victims of husband abuse should be neglected.

Hence, it is important that we integrate our efforts to combat DV by joining efforts and by focusing on the family as a whole, rather than by resorting to divisive and vindictive means. It is imperative that we continue to express a serious concern for and commitment to abused persons, regardless of their gender, age or background. Policies must be based on equity and justice, on understanding and compassion, on empirical evidence and scientific truth, and on a full understanding of the nature of the problem. It is important that we set aside vested interests, 'political correctness', personal ideologies and gender bias, and realise that the only remedy to domestic violence will be achieved when policy makers rest their judgment on empirical evidence, and are committed to the truth and to healthy family relationships. Public concern must shift its focus from the

protection of the female victims and feminist interests to the protection of all victims and of all families.

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We should be cognisant of the fact that, as the former Governor General of Australia, Bill Hayden, noted in his opening speech to the Second National Conference on Violence of 1993, *"to see violence in the home ... as a war against women is to distort reality. Men too are victims. Women too are perpetrators... Neither sex has a monopoly of vice or virtue"* (Hawes, 1993). This is a true reflection of reality in this

country. And yet, no one seems to have taken it seriously; and worse, to date, no one has done anything about it.

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## ***Domestic Violence and the Male Victim Ann Lewis and Dr Sotirios Sarantakos***

### **Abstract**

Over the past few decades, 'domestic violence' has been defined as violence by men against women and children, and women's violence against their male partners has been considered to be either non-existent, or the fault of men, or has been trivialised and justified in a variety of ways. This paper challenges this notion of abuse against males and, using data from a study of men abused by their female partners, argues that domestic violence against males exists, that their voices are not heard; and that the refusal to acknowledge the existence of this form of abuse is part of a fundamental disempowerment of men which has arisen from a tacit acceptance in society of the radical feminist agenda. The paper concludes that domestic violence is not an issue of gender, and that official policy should be directed to providing the kind of help for abused men which up until now has been available only to women.

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## **Domestic Violence and the Male Victim Ann**

**Lewis and Dr Sotirios Sarantakos**

### **Introduction**

Over the past thirty years, the focus of research and public attention shifted from couples (or rather men) to women. This is most obvious in the area of domestic violence (DV) where public interest and concern has almost exclusively focused on women, leading to *feminisation of domestic violence*, and implying an *invisibility of the male* victim (Sarantakos, 1999). This is justified by a new philosophy which equates domestic violence with wife abuse, where husbands are taken to be the primary perpetrators and wives the primary victims (Adams, 1988:191; Dobash and Dobash, 1977-78, 1980, 1992; Grace, 1995:3; Kurz, 1993:88, 99; Saunders, 1988: 90; Schechter, 1982; Seth-Perdie, 1996; Thorpe and Irwin, 1996:6; Tierney, 1982), and the conviction that "only violence against women should be evaluated as a social problem requiring concern and social intervention" (Kurz, 1993, reported in Gelles and Loseke, 1993:63), that "only men can be perpetrators of violence" (Kurz, 1993:88), and that "women are typically victims and not perpetrators of violence in intimate relationships" (Kurz, 1993:99).

This interpretation of family violence implies further that women's aggression is a reaction to men's actions toward them, *blaming the victim* for his plight. It is argued, for instance, that a wife who beats her husband has herself been beaten and that her violence is the violence of self-defence (Straus and Gelles, 1990; Pagelow, 1985; Saunders, 1988); that when women assault their husbands they do so to defend themselves and to prevent further damage (Wolfgang, 1957); they use violence as the last resort (Totman, 1978), and that they are usually subjected to violence for a number of years before they assault or kill their spouse (Browne, 1986; McCormick, 1976, quoted in Bauman, 1997). This perception of DV resulted in a marked shift in relevant policies from a pro-husband to a pro-wife position, and a bias in favour of abused wives and against abused males, who are being ignored, neglected and disbelieved.

The validity of this perception of DV and the relevance and efficiency of the policies that are informed by this paradigm have been seriously questioned by many

writers (for a summary of such studies see Archer, 2000; Fiebert, 1998; Sarantakos, 1998b, 1999), who, using extensive empirical evidence, demonstrate that men and women are equally violent against each other, and that although men might on average cause more damage to their spouses, women's violence is by no means harmless, but very destructive. Although the validity of these findings is hard to refute, the question as to the nature and structure of husband abuse (used throughout the paper as the counterpart of wife abuse to denote abuse of males by their female spouse/partner) is still being contested, and requires stronger and more convincing answers, to overcome doubt and disbelief among the critics of husband abuse.

More particularly, there is a need for qualitative evidence that explains thoroughly and directly the internal structure of husband abuse, that is, the way it is constructed, the extent husbands and wives contribute to the creation of the problem, the system of power, the presence of abuse prior to the wife's assault, etc. There is simply a need for qualitative data that would provide a clearer and more convincing presentation of facts relating to male victims of DV, that will shed light on the reality of this problem. To provide such data is the purpose of this paper. The main concern of the analysis is to ascertain whether there are families in which wives abuse their male partners, and if so how genuine these cases are, what do they contain and how can they be explained.

## **Methodology**

This paper presents findings gathered through a study of abused men from Australia and New Zealand, conducted by A. Lewis. The respondents were identified in a variety of ways but predominantly through contacts with men's support groups. This informal and non-systematic sampling construction is justified by the fact that there are no sampling frames available to draw samples from; apart from this, abused men do not respond readily to calls to participate in surveys, particularly when they are still living with their abusive spouse.

Initially an information sheet about the proposed study was sent to men's support groups and to organizations working for reform of family law, asking for assistance with the project. Included was an invitation for men who had been abused by their female partners to phone the researcher for an interview. It was also stated in the information that men who were to answer this call were supposed to have been

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abused by their partner for at least twelve months and that the relationship has already ended. Confidentiality and anonymity of the respondents was assured. This avenue to assuring respondents for the study was successful and led to the identification of 48 respondents. Their background was rather diverse, with

their occupations ranging from tradesmen to medical specialists. The majority of the respondents were of Anglo-Celtic background, and the age range was thirty to sixty-five. Twenty-one of the respondents lived in Sydney.

Data collection was accomplished by means of unstructured interviews. This was consistent with the nature of the study, which was qualitative and as such placed strong emphasis on DV as seen from the point of view of the respondents, allowing scope for exploration and for collection of personal stories, and for detailed description of their feelings at the time of the abuse, and of the effects violence had on their lives.

It goes without saying that a qualitative study based on a non-systematic sampling model cannot claim representativeness and therefore its design does not allow inductive generalisations (see Sarantakos, 1998a). Nevertheless, in its qualitative context, the study allows analytical generalisations, and is equipped with the required attributes to address effectively the research question. Analytical generalisations can provide a logical and methodological basis for explaining issues such as whether there are males who feel abused, what this abuse entails, how male victims of domestic violence experience such an abuse, how destructive this is felt to be, how males respond to it, and how they think it affects their life. In summary, the findings are expected to help better understand women's violence against their male partners, what it contains, and how and why women's violence is viable in a modern egalitarian society.

## **Findings and discussion**

### *1. Women's violence*

The study revealed a number of trends which allow a clearer understanding of what women's violence against their partners entails. The first finding of this part of the study is that abuse of males by their female partner is a real problem, with women abusing their spouse/partner in a manner which is felt to be not markedly different to

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that of husbands abusing wives. In most cases, violence was reported to begin in a mild form as 'expressive' violence and to quickly develop into a serious family problem. When the relationship became gradually more committing, particularly through the birth of children and common ownership of house, and emotional dependence, the problem became manifested in the relationship, and rather difficult to control. It was also found that the types of violence inflicted by women on their partners were

diverse, but serious nevertheless, causing considerable damage to the victims. Respondents stated that, over the history of their relationship, they experienced types of violence listed below.

(a) *Physical assault - Verbal assault:* The most commonly reported form of violence was unreasonable and unprovoked verbal attack: endless shouting, calling names, insulting, etc. paralysed the man's ego and his defence system to the breaking point. On the physical side of the problem, most common were reports of husbands being kicked, scratched and punched, or having their hands and arms bitten while trying to protect themselves, throwing or making direct contact with weapons such as knives, bottles, plates, photos, ashtrays, hot irons, and hot liquid, causing the man serious injury, often requiring medical attention.

(b) *Psychological abuse:* Abusive wives were reported to target the husband's feelings and emotions, and the 'soft spots' that affect his mood, self-esteem, and confidence. An example of this is a man's feelings as a father, where women would accuse him for being inadequate or that even the kids were not his ( '*they're not your kids anyway; you've only been a sucker; I've been having affairs with other men all the time*'). His capacity as a worker is another example ( '*who did the work for you?*' '*whose palm did you grease?*'). Women would also put down their partner's body shape, his sense of colour, his ethnic background, his mental capacity, his economic or social status, his friends, the way he fixed things around the house, and the way he cooked a meal.

(c) *Abuse of money and property:* Abuse included also cases of inappropriate and improper use of money, financial deprivation, misuse/damage of property, eg destroying husband's cloths, and ripping out the windscreen wipers. Peter, an abused partner, describes one such example as follows: *She kept making demands that I earn more money, so I finished up working three jobs, seven days a week. But no matter*

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*how much I earned, she would spend it all on luxuries and abuse me because we were getting deeper into debt.*

(d) *Social control:* Wives controlled the husbands relationships with friends and his freedom in general by using a variety of means ranging from lying down in front of the car to prevent him from leaving the home, to locking the husband in the house, or removing his credit card to restraint his mobility and independence.

(e) *Domination and control:* Abuse was not just a sum of violent acts, but in almost all cases it constituted a system that was imposed upon the abused spouse, that

dominated his whole life. The study reported that abusive women assumed total control of the relationship eg by getting hold of power producing resources, imposing themselves upon the husband by enforcing authority over him or indirectly making serious threats to frighten him into submission.

(f) *Intimidation and fear*: In most cases, the wife's intent to control and dominate the husband entailed efforts to induce fear in him relating to his personal safety as well as the fate of the children and property in general. She would often threaten to burn the house down, hurt the children or animals, or kill herself, him or the children: she would often drive dangerously to frighten him, and make him realise how serious and dangerous she could be. This generated intimidation, insecurity, and fear in the husbands and the family members in general.

(g) *Child abuse*: Many women were reported in this study to also abuse their children, including all possible violent acts, ranging from verbal abuse to physical and emotional abuse. In such cases, the husband felt totally powerless to interfere. Stuart, an abused partner describes a 'mild case' of child abuse in the following example: *'My daughter was using paint brushes and she kept putting them in her mouth. My partner said to her, 'if you like it so much you can drink it' and she forced the liquid down her throat.'*

(h) *Abusing relationships*: Abuse took many other different forms such as disappearing from the house without explanation, sleeping in the spare room, locking the husband out of the bed room, treating the man 'like a boarder', not passing on messages, or refusing to communicate with him.

(i) *Sexual abuse*: Women used sex as a form of punishment, or as a means of manipulation, with some demanding sex at any hour of the day or night, or in a manner the partner disliked or was unable to perform. If the man did not comply, the

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woman would go on the attack, making derogatory remarks about his virility ('*if you really loved me, you would cut off your penis*' or '*What are you, a man or a mouse?*'). Retaliation for 'non-performance' included things like humiliation (often in front of friends), criticising his manhood, making threats to have affairs with other men, or just locking the man out of the house.

(j) *False allegations of violence*: Wives did not hesitate to make false allegations of violence to achieve their goals. Geoff, an abused partner, described one of his experiences as follows: '*She started punching me violently. As I moved away, one of the punches landed in the door frame and she broke her hand. She told everyone I had attacked her with a cricket bat.*'. In other cases, after a fight with her partner the wife would run to the police making false allegations of violence; when a trace of injury was present, her allegations were thought to be substantiated; it was automatically assumed it was the fault of the male.

In some cases the severity of the abuse decreased with time, with victims becoming increasingly more tolerant, to avoid confrontation or displeasing the wife, at least until they felt safe to leave. In most cases, the severity of assaults increased, with males becoming increasingly disappointed and pessimistic, resisting, revolting and questioning the presence and legitimacy of violence. In all cases, the experiences were most painful and destructive, ultimately leading to full breakdown of the relationship.

## 2. *Experiencing abuse*

The intensity of pain that victims of women's violence experienced in their home was evident in their statements but also in the manner they described their experiences, the tone of their voice and the kind of descriptions they used to show their suffering. However, all sources of information converge to demonstrate that all respondents have suffered immensely in the hands of their wives. Regardless of the severity of the attack, the pain was almost always the same. The most common experiences of the victims are briefly described below.

(i) *Pain, loss and betrayal*: The most obvious response was physical pain, physical discomfort, ill health, inability to function properly, eg when they could not use their arms, legs, hands, etc. fully, limited movement, also as a result of controlled resources, car use, threats, etc., and reduced productivity at home as well as at work. In the view of the respondents, this issue, despite its severity, has not received

adequate attention, mostly due to the fact that men are normally thought to be strong enough to cope with physical attacks and to deal with their consequences. Loss was evident in all aspects of their lives, including property and finances, loss of friendships, loss of trust, loss of children and personal loss. Another issue which many men reported to have affected their well-being significantly was betrayal. They felt they had opened up themselves to their partner, shared their sense of inadequacy, their fears and vulnerabilities, and then the woman used the information as ammunition against them.

(ii) *Fear, and psycho-somatic symptoms:* Men reported also symptoms such as tightness in the stomach, muscular pain, racing pulse, thought distortion, and panic attacks. Perpetual fear and being 'on guard' were experienced by most participants. Other commonly expressed reactions were, feelings of lack of control and inadequacy and constant denigration of the man, which often caused him to accept his partner's view of him, and to lose self esteem. As Ada, an abused male, noted: *'It got to the point where what self esteem I had, had gone. I was afraid to even attempt to do anything, because I knew within myself that I was going to fail - or she would tell me I'd failed. So it just wasn't worth trying.'*

(iii) *Confusion:* Several men reported confusion and uncertainty, and found they could not continue in their jobs. Their skills were so affected that they risked injury. But the belief that the abuse was all their fault was also common. Many were led to believe that women were superior to men, so when the abuse started, they assumed they must have done something wrong. The woman would blame the man for all her feeling states and he would be manipulated into feeling guilty.

(iv) *Despair:* This situation was compounded by the fact that there was no other option for them but to either leave or accept the situation as it was, at least up to the time when leaving would be possible. This sense of powerlessness often led to intense emotional pain and feelings about death. The methods the men used to avoid potentially violent situations included avoiding close contacts with the wife, remaining calm and passive, locking themselves in a safe place, getting home late, staying at a friend's place but without divulging the reason, sleeping in the car, the bath tub, shed, garage or wherever they could find shelter.

(v) *Disempowerment:* As noted by many writers (Young, 1997), respondents stated that powerlessness at home is exacerbated by the fact that it is reinforced and

solidified in the community through the response of friends, the professionals, and the authorities, who respond to men's complaints and call for help with mistrust, disbelief, and ridicule. Here, defending himself against her attacks is pointless and counterproductive: his self-defence will be interpreted as attack, and he will lose more than gain from this (freedom, children, house etc.). Yet, when the woman claims to have been assaulted or makes false accusations of sexual molestation of their children, everyone listens, believes her, trusts her and employs all available means (eg Apprehended Violence Orders). This situation is well documented (see Cook 1997:62; Green 1998:213; Ambrose et al. 1983 cited in Smith 1998:24; Jacob 1986 cited in Smith 1998:12; Sarantakos, 1999; Arndt, 1995:225).

The study shows clearly that women's violence against their partner is a real issue and a serious problem. Women engage in persistent, often unprovoked physical and verbal attacks, humiliate their partner, force him to be totally accountable to them, threaten his safety and that of his children, manipulate him into staying in the relationship, and persuade others (including authority figures) that she, not he, is the victim, and in so doing they destroy any sense of personal power and autonomy which the man may once have possessed.

### **Women's violence and feminism**

The findings of this study offer sufficient evidence showing that women's aggression against their partner is a hard and indisputable reality, and that it is not different from men's violence against their female partners. This is no longer a contentious issue; many other overseas and Australian (Hagon, 2000; Sarantakos, 1998b; Stockdale, 1998, 1999) studies have provided similar results. Hence, the question is no longer whether or not women abuse their male partners but about the factors which contribute to this problem and to the sustenance of this privileged position of women in the context of the family and the society. There are obviously many factors contributing to this, but the most relevant and also most important is radical feminist philosophy. This holds that the sexes are adversarially poised; that all forms of oppression are derived from the power men have over women; and that men are a class of abusers, from which arise individuals with greater or lesser abusive capacity.

It is for instance argued that phallocracy is 'the most basic, radical and universal societal manifestation of evil', and the underlying cause of genocide, racism, nuclear and chemical contamination, and spiritual pollution, with men being the 'enemy', to be blamed for the present situation (Daly, 1984). It is argued further that, 'the penis is linked with rape, manhood is synonymous with violence, maleness is a violation of an innately feminine nature, and indeed masculinity itself is no more than an abominable fiction or construct that "progressive" politics must attempt to destroy' (Tacey, 1997). So extreme these views might be, they have become a part of our public domain (Sheaffer, 1997) and constitute the basis of our policies. Hence, men are thought to be powerful and women powerless, and therefore men are the violent spouses and women the victims.

Violent experiences at home, accompanied by tolerant social practices and community attitudes as well as social policies treating men as the villains even when they are the victims, and making systematic efforts to 'resocialise' them to submission, cannot but lead men to alienation and disempowerment. Men gradually succumb to feelings of self-hatred when faced with accusations that they are bad people who must be blamed for what is wrong with the world and who cannot expect to be treated with kindness or consideration (Thomas, 1993). Further, since victim-hood is associated with innocence, the alleged moral disparity between the sexes, as expounded in radical feminism, is given even greater credence because of women's past oppression. Taking the moral high ground has allowed women to act towards men in the roles of judge and executioner. Despite the pain and humiliation experienced by the participants in this study, many still held to the idea that 'women are better than men'.

Further, external, institutionalised oppression results in the creation of 'distress recordings' (Whyte, 1998a); they internalise the endless criticism that drenches society, and this leaves them feeling discouraged, isolated, guilty, depressed, angry, and vulnerable to interacting with other men's negative recordings (Whyte, 1998b). Because of the shift in the perception of men and the prejudice against them in the public domain, women are now in a position of being able to exploit that power to the detriment of men. A woman can abuse a man with impunity, since she knows he will have little, if any, recourse in the legal system, and that in the event of a breakdown in the relationship, she will have custody of the children and can use them as a weapon against her partner.

Disempowerment has traditionally been seen as the result of an interaction between powerful and oppressed groups. Whyte (1998a) suggests that the oppression of men does not fall within this definition. He states that there is no well -identified powerful group which oppresses men; it is the whole of society. A similar argument is used by Fauldi (1990) when she asks 'Why don't contemporary men rise up in protest against their betrayal?... Why don't they challenge the culture as women did?' Her answer is that whereas women were fighting against something identifiable, male domination, men have no clearly defined enemy. Men cannot be oppressed when the culture has already identified them as the oppressors and when they see themselves that way.

## Conclusion

This research showed that the abuse of men by their female partners is a real family problem, and a serious problem indeed, which varies little from the abuse of women by their spouse. Men in families with abusive wives suffer all consequences of violence abused wives experience, which are as damaging and as traumatic as assaults by men. Although in the cases studied, the severity of physical assaults by wives is not as high as that of some inflicted by males, they are serious and damaging nonetheless. Abusive wives make more use of weapons and other instruments than abusive husbands, and the rate of women killing their husbands is high enough to demonstrate the destructive capacity of women in their families. The fact that the number of mothers killing their children exceeds by far that of father attests to this (Thomas, 1993). The study verified, further, the presence of male disempowerment which has disastrous effects on the well-being of males in families and the society, and inevitably on their relationships at home and on their children.

These findings have implications for theory, the family and for social policy. In the first instance, the study proves that the public image of abused husbands portrayed by media driven by feminist paradigms is incorrect and misleading and misrepresents reality. Males are not the 'diabolic husbands' who oppress and tyrannise their female partners. In the word of a counsellor who has been dealing with male victims of DV for several years, *'Men are not the violent time bombs that propaganda lead us to*

*expect; this false image is the result of politicised hysteria and tendentious surveys'*  
(LFAA 1998).

The view of the participants in this study present a clear image of the above. They were mostly quietly spoken, non-aggressive men. When they were being attacked they exercised restraint, either removing themselves from the vicinity or trying to reason with their partner in an attempt to calm her down. In the interviews they were more than willing to acknowledge personal deficiencies, and to make all kinds of allowances for their partner's behaviour. These men did not fit the radical feminist view of men as oppressors.

Men are certainly not the diabolic monsters, and women not the angelic creatures that hold the monopoly of victim hood. The damage they cause to their partners, their children and their aged parents is a testimony for their destructive violence, which unfortunately remains hidden and - more so - is excused, justified and even glorified by media and women's groups. As a politician noted some time ago, men too are victims and women too are perpetrators; neither sex has a monopoly of vice or virtue. Unfortunately, feminist aggression and male tolerance and respect for females corroborated in creating a situation where maleness is disregarded, bashed and trivialised and female victim hood unjustifiably promoted and supported, for the benefits of the DV industry, which obviously is in the hands of feminists.

Vested interests and the urge for keeping 'the business going' necessitate that the image of the battered, victimised and maltreated wife remains alive and at the top of the political agenda; only then can funds be guaranteed and sustenance of the industry assured. Obviously, accepting the fact that women are equally dangerous and destructive at home works against their business interests and is to be suppressed. Hence, abuse of males by their female partners is trivialised, ignored and excused, the high proportion of husband murderers (in the USA more than 40 percent of all spouse murders) is either suppressed or justified and excused as self-defence, and the high proportion of female child abusers and child murderers (much higher than that of men) is suppressed and ignored. Moreover public figures present an image of DV as being a male crime.

Further, even men themselves are made to believe they are the villains who do not deserve acknowledgment and remedy. As critical social theorists noted, adherence to this kind of ideology ultimately becomes a form of false consciousness in that it

may conceal unjust social practices (Mezirow 1990). It can cause the members of an oppressed category to believe that there is something intrinsic and natural about the way they are treated, rather than something socially constructed. Certainly nothing new, feminists were talking about this process for some time now to justify their claims for equality regardless of the views and attitudes of women; but is not thought to be applicable to men.

Finally, where there is a discrepancy between official policy and the manner in which it is implemented, it can be difficult for disempowered individuals to realise that they are in fact part of an oppressed group, and that the unacknowledged policies and practices which work against them have arisen because of a perception in society that they are given exactly what they deserve. It is therefore important that policies addressing male victims of DV entail the task to elucidate men about their real status and that they cannot continue to be seen as oppressors, and that in many cases they have become the oppressed. The pain and humiliation of being abused by a woman, together with the lack of response to their predicament within the public arena, should cause them to challenge those structures which have undermined their belief in themselves as worthwhile human beings. And the government has the task to facilitate this by abolishing policies based on discrimination, bias and prejudice, and by taking a fair and balanced view of gender in the family and society.

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## **Public pressure onto judges and Parliament**

## **Retired Judge Graeme MacCormick speaks up on criticisms of Family Court**

Judge speaks up on Family Court criticisms

[http://www.nzherald.co.nz/topic/story.cfm?c\\_id=240&objectid=10386397](http://www.nzherald.co.nz/topic/story.cfm?c_id=240&objectid=10386397)

12:00AM Saturday June 10, 2006 By [Chris Barton](#)



Retired Auckland Family Court Judge Graeme MacCormick. Picture / Brett Phibbs

Graeme MacCormick retired as Family Court judge in December after serving 15 years on the bench. Here are his views on men's groups' protests.

### **Will judges be intimidated by the men's groups' protests?**

I do not perceive the judges of the court will be in the least influenced in their decision-making by any protest outside their homes. They have a job to do on behalf of the community. The children whose lives are affected are the children of their birth parents and also children of the community.

What often seems to get overlooked in criticisms of the Family Court is that the originating problems brought to it are not of the court's making. There are frequently power and control issues between the birth parents or between them and subsequent caregivers.

### **Many in the men's groups vent a lot of anger. What's behind this?**

Anger is a natural emotion which shows other people our boundaries. It is precisely where our boundaries lie and the way we deal with our anger that counts. Anger that is not properly dealt with too often leads to physical outbursts and assaults and is, quite frequently, a feature of the more difficult Family Court cases.

Where I think men - as a broad generalisation - find themselves disadvantaged is when women have been the primary caregivers before separation and men have been the primary providers.

When the relationship breaks down and the woman tries to hold on to her role to the substantial exclusion of her former husband or partner, then the father is left with resort to the Family Court, which is not always resourced to be able to respond as quickly as the father - or indeed the court - would like. Nor might the outcome be exactly what either partner wants, depending on the circumstances and the perceived welfare and best interests - and views - of the child or children. Those are the determining factors with the law as it stands.

### **The protesters want equal parenting as the default position of the court in decisions about the care of children. What's your view of that?**

I question whether they are going about that in the right way. They need to convince a majority of members of parliament of the need for a law change and that it will be best for children. Men's groups would need good research to back their position.

In the meantime, the judges of the court will try to apply the law, as it stands. It seems to me there is little point in attacking judges as a body for doing that.

I doubt that you are likely to achieve change by targeting the wrong people. Good, positive time with both birth parents, subject to issues of physical and emotional safety, is clearly the ideal. In an increasing number of cases that is equal time.

Domestic Violence Act Submission \_\_\_\_\_ by Murray Bacon \_\_\_\_\_ revision 34  
But sometimes extreme, ongoing conflict between birth parents, both locked in a battle over their children that they become ever more determined to win, makes this impossible to achieve.

Sometimes children have had so much conflict in their lives, without being able to see an end to it, that very occasionally and as a last resort a choice may need to be made for care by one birth parent to the exclusion of the other, hopefully temporary.

**Men's groups say the court grants protection orders against men too easily.**

There have also been complaints, on behalf of women, that "without notice" applications for protection orders under the Domestic Violence Act were not being granted readily enough and that too many were being placed "on notice", with significant physical risk to women and children. This demonstrates the difficulty of satisfying everybody. When temporary protection orders are made without notice, in perceived situations of a threat to safety, and when children are involved, the court is increasingly scheduling a review of the temporary order within one or two weeks.

**Men's groups also complain about mothers making false testimony to the court.**

For "false testimony" one can often substitute "a different perspective or perception". If there is genuinely false testimony before the court and it is not acknowledged or corrected and it is material provided with intent to deceive the court, this can clearly ground a prosecution for perjury. On occasion, the Family Court will refer a matter of perceived perjury to the police for consideration of prosecution. Anything in the nature of deliberately false evidence or misleading testimony will almost inevitably be counter-productive to the position of the person on whose behalf it is provided.

**The protesters say they are targeting lawyers because they lie to the court. Why would they make such claims?**

This probably refers to the lawyer for the children, with whom dissatisfied litigants of both genders will frequently take issue. Their job is to represent the child or children independently of the parents or caregivers.

Their client is the child. But they are not meant to give evidence to the court - as opposed to making submissions based on the evidence.

It is, however, normal for the lawyer for the child to advise a child's views and the child's instructions, if the child is able to provide them. That may not be exactly what the child has said to his or her parents.

**What do you think of the men's groups' tactics?**

Men's groups can frequently be helpful in providing a "McKenzie friend" or support person for a father acting on his own behalf. Likewise they fulfil a useful purpose in keeping before the public the importance of birth parents to children.

But Family Court judges are well aware of this and need no reminding. Men's groups need to be carefully focused if they are not to be counter-productive.

I suspect that the protests may, in their targeting, say more about the protesters than about the operation of the court. If their intention is to embarrass, harass or intimidate might not similar traits and tactics have been factors in the breakdown of their marriage or relationship

The New Zealand Law Journal **August 2006**  
**Conflicts of interest and family law**  
 Peter Zohrab, Wellington,  
 Looks for what lies beneath the conflicts

Some people were surprised when fathers started picketing the houses of Family Court lawyers, psychologists and Judges, but this was, in part, a reaction to the conflicts of interest that affect all professions in New Zealand, including those three. The two main conflicts involve women who see their careers and/or relationships as (in part) a way of pursuing feminist goals, and men who see their careers and/or relationships as dependent on not upsetting such women, which leads them to reinterpret issues in a feminism-compatible way. The personal is political.

Historically, this started with a conflict between the interests of separate groups. The family was a strong institution that stood between the individual and governmental and other organisations. Like all institutions, the family needed leadership, and this was provided by the eldest male. Feminists manage to persuade a large proportion of society that these males were affected by a conflict of interest which was detrimental to the interests of females, and that the solution was to move towards a model involving "equality" - later, this often became "equity", and then sometimes "girl power".

However, feminists themselves have been affected by a conflict of interest, as a result of the fact that they have been involved in political activism over many decades. They have claimed victimhood for women and have often acted to suppress attempts to disclose the male victimhood which arguably existed (and still exists) - even under the patriarchal model. They have clearly seen that any societal acceptance of a victim-role for men would undermine the case for female victimhood that feminists have been building up.

A Court of Law would not simply accept one party's bald assertion that that party's goal is equality or equity between the parties, and then deny the other party a say in the determination of what that equality or equity might, in practice, involve - yet that is the way the Law Society, the Institute of Judicial Studies; law schools, law journals and the vast majority of individual lawyers appear to behave in relation to feminism. Natural justice is absent.

Wendy Davis, "Gender bias, fathers' rights, domestic violence, and the Family Court" (2004) 4 BFLJ 299 exemplifies this point: the excerpt from it which was reproduced in a large, bolded and italicised font and placed in a box for emphasis has nothing to do with the Family Court or the law as it is today, but a lot to do with political ideology, unsupported by evidence:

"Gender bias can prejudice both women and men, but it is not symmetrical. Unlike gender bias against men, gender bias against women occurs in the context of women's generally disadvantaged position in society and, historically, under the law".

In a journal purportedly about Family Law, was it appropriate that such a passage should appear, let alone be highlighted as the main message of the article? The word "law" occurs in this excerpt only in an historical context, which is irrelevant to an article about the law as it is today. The rest of the passage is a claim about women's allegedly disadvantaged position in society, which is a political, rather than a legal claim. Not only is it political, but it is ideological, because it relies on this catechism having been instilled into us with our mothers' milk, absolving the author and editor from the need to provide one shred of evidence, either for the claim about legal history or for the claim about women's current position. Legal issues involving sexual bias, fathers' rights, domestic violence and the Family Court can only be rationally discussed in a context free of the guilt-feelings which some expect males to feel with respect to historical or non-legal matters.

Moreover, the excerpt from Davis quoted above is incoherent and arguably false. It is incoherent to mention "women's generally disadvantaged position in society" without including the implied phrase "by comparison with men's position". It makes no sense to claim that women are disadvantaged without claiming that men are less disadvantaged, yet men are routinely not mentioned in such statements. If men were mentioned, that would open the door to asking what disadvantages men suffer from, such as life-span, conscription, workplace accidents, imprisonment rate, suicide rate, health care, and so on. In terms of legal history, as well, one might mention the ways in which women were free of many legal liabilities that men had to bear.

A good case could be made that men are and have been just as disadvantaged as women both under the law and generally in society. The interested reader is referred to my book, *Sex, Lies & Feminism* (see <http://equality.netfirms.com/contents.html>), and to the many other books and web pages on the subject. Moreover, the rise of the Men's/Fathers' Movement must surely be an indication that this particular emperor might have no clothes.

In a relatively informal setting such as the Family Court, (Bryant *Family Models, Family Dispute Resolution and Family Law in Japan* (19-950) 14 UCLA Pacific Basin LJ 1) the potential is for that mindset to prevail, even though the evidence is that feminism is really about women's perceived self-interest. All professionals involved are capable of being affected by some sort of political conflict of interest.

The Men's/Fathers' Movement has many legitimate grievances, and -in my view -they all result from this problem of conflict of interest, which operates when Parliament drafts relevant legislation and when public servants go about their business, just as much as when cases are decided by negotiation, by mediation, or in a Family Court hearing.

I do not offer a solution here. All I assert is that replacing one form of apparent bias with another form of apparent bias does not necessarily constitute progress.

New Zealand Law Journal August 2006

# The New Zealand Law Journal

## The Family Court

**T**he Family Court is back in the headlines again with demonstrations outside the homes of Family Court Judges and, significantly, certain lawyers, and with a highly critical television programme on TV3. The public complaints mostly concern parenting of children. More quietly, tax, commercial, trust and company lawyers who have been forced into the Family Court for the first time by the ill-considered Property (Relationships) Act 1976 record their horror at both the process and the inability of many of the Judges to deal with the issues involved.

The status quo is defended in the corridors of power and within the profession largely by a group whose smugness, complacency and prejudice was well illustrated on the TV3 programme.

There is no room for complacency, in view of some simple facts:

- in no other area of law, not even criminal, are so many dissatisfied customers moved to wage campaigns against the Court;
- in no other area of law are there so many reported cases of Judges acting in flagrant disregard for statutory limitations on their powers or the principles of natural justice;
- it is no secret that it is the poor performance of large numbers of family (and criminal) lawyers which is the driving force behind proposals for compulsory continuing professional development.

The campaign has taken the form of a campaign about sexism and anti-male attitudes. No doubt there are some around. But your editor has seen plenty of cases (mercifully at second hand) of judicial and professional incompetence of which women have also been the victims. The facts of life just tend to mean that the victims are usually men. But several complaints are routine and are brought by women as well as men.

One of the most common is where one party takes a child to another part of the country, or has voluntarily been given the child by the other party for a period for some reason. The Court appears not to have the wit to realise that in this situation one party has all the cards and the other none. Attempts at negotiation and mediation are therefore fatuous. Attempts to conduct prolonged interlocutory procedures such as conferencing and settling of issues simply provide opportunity for the party in possession of the child to drag matters out by failing to prepare/attend etc. After four or *five* years of this (and enormous expense on the part of the party trying to get something done), the Court announces that the child has now been with that party for so long that it would be disruptive to move it. To suggest, as Judith Surgenor did, that someone driven to protest by years of this sort of thing probably wouldn't be a good parent anyway tells us more about the person speaking than anything else.

The next problem is with a breed of family lawyers who believe that far from avoiding conflict the best tactic is to up the ante and the temperature. Your editor has seen cases where routine and neutrally worded applications (eg in one case simply for a DNA test to establish paternity) are responded to by statements of defence filed by lawyers consisting of vituperative and completely irrelevant attacks on the character of the applicant. In every town there appears to be at least one family lawyer well known for winning cases by brow-beating, intimidating and harassing the opposite party and lawyer and lying to the Court but the other lawyers are always too wet to make complaints to the District Law Society, or even to acknowledge what they told their client when the client makes a complaint.

Underlying many of the complaints is simple mal-administration, parties not being informed of hearing dates or orders against them, timetables set and not enforced, hearings constantly adjourned far into the future and Judges imposing complex procedures on parties who don't want them. (Maori in particular complain about being made to take part in administratively complex whanau conferences that they never asked for.)

It cannot be said that the Principal Family Court Judge has done anything to help by beating the tired old drum of making the Bench more representative of the community. This is a heresy in jurisprudential terms and in a Court where a Bench always consists of a single Judge it raises great uncertainty about what the Judge is supposed to be there for.

In fact it is interesting to analyse what both the Principal Family Court Judge and Principal Youth Court Judge have had to say in recent months. These two Courts are based on the un-court like principle that they can produce practical solutions to peoples' lives and sort them out. Inevitably, they start to take on the attitudes of a social work agency and when it becomes clear that the social problems they are wrestling with will not go away they start publicly to campaign for changes that will enable them to do their job better.

The truth however, is that they should not be doing that job at all. The role of Courts is to settle disputes as to legal rights, not interests. Once the legal rights have been demarcated the parties can negotiate over them in other ways and other parties will be saved going to Court at all. If the law is emptied of content and Courts come to see themselves as solvers of practical problems then litigation can only increase and the rule of law come under threat. Rule by Judges is not the rule of law.

The current Australian moves show the correct direction. The Family Court should be restricted to deciding issues of law, Judges should attain some humility as to their role and their ability to sort out the world's problems. If this is not done the effects of current controversy over the Family Court will come to corrode the legal system as a whole. 0



## Men's Protests

# Court struggles to stand tall in a community where family matters

The Family Court seems often to operate in a moral vacuum, says Terry Carson

**T**HE Family Court Matters Bill before Parliament is apparently designed to improve the standing of the Family Court in the eyes of the community.

More information about the court will become available and judges will wear black formal gowns to give, in the words of the principal judge, more gravitas.

However, I would suggest that the problems with the Family Court, and how it is viewed by the community, run much deeper than the issues the bill might address. The court suffers from being the only court in our legal system that appears to frequently operate in a moral vacuum.

In the Criminal Court, laws that state "thou shalt not kill or steal" enjoy general public acceptance. The Civil Court compensates those who have suffered loss at the hands of wrongdoing third parties. And its equity jurisdiction has a historical moral basis.

The Family Court operates differently. The no-fault divorce ideas of the 1960s have led to family law legislation that often seems to reflect no clear social values, apart from financial equality, regardless of behaviour.

Nowhere is this more evident than in the Family Court's property relationship jurisdiction. It is ironic that if one enters into a business partnership with a total stranger, the law requires the partners to act towards each other with the utmost good faith and a civil court will enforce that requirement.

However, one can lie, cheat and betray a spouse, civil union or de facto partner and the Family Court usually will order the payment of half the family wealth to the offending partner without making any moral judgment.

Indeed, if the other partner brought a house or more wealth into the relationship at the outset, the effect of the law means the Family Court can richly reward a partner whose actions may have been morally reprehensible and have destroyed their family.

It has been legally fashionable during the past 40 years to pretend that conduct does not matter in family relationship breakdowns and that it always takes two people to make or break a relationship.

But the social expectation that people in a committed relationship will behave with some degree of decency or loyalty towards one another, has been deeply ingrained in our society for more than 1000 years.

Individuals who have seen their families destroyed and homes lost through the selfish behaviour of a partner, find no consolation in the lack of interest the Family Court often displays to their circumstances. This comment is not an adverse reflection on judges, it is simply how the law operates.

Often in the Family Court litigants try to raise issues that have caused them considerable upset in their relationship breakdown, only to be told they have no relevance in law.

Sometimes, they are told in an unintentionally but nevertheless patronising manner, they should only focus on their future. Important personal issues are left unresolved for these people. They see the Family Court as having failed them.

While much of our family law legislation continues to lack any connection with the values still held in most parts of our community, the Family Court is likely to continue to struggle to attain the respect it should have.

**III Terry Carson is a South Auckland lawyer, with more than 35 years practising in the Family Court**

# Editorial North & South

## All In The Family Court

**T**he most difficult letters I get are from the fathers. Angry, anguished, heart-broken, humiliated fathers, some of them sounding three parts mad. Like

the screaming dog that's been hit by the car and is in death-throes agony. You can feel the pain rising from the paper as they write of loss of love, lifestyle, self-respect and their heart's greatest desire — contact with their children. These letters are difficult to deal with because on the one hand you wonder if these people are insane and on the other you observe they are clearly intelligent human beings: their letters are often well-crafted, perfectly spelt, the grammar is intact, they're erudite but they have a grief-stricken, hysterical edge as they beg for help. The letters have one thing in common — they're all written about the Family Court and how their writers have been put through a great shredding machine within its walls. The letters have been coming for several years now and the names, ages and geography may change but their number and desperation doesn't. They are a family of faceless, lost fathers and I fear for them.

The Family Court. What a can of worms. What a secret society? Who — that hasn't got a financial or emotional stake in its proceedings — really knows what goes on within. The law is insistent that no detail of any case within be reported. National MP Nick Smith knows that only too well now. He's awaiting prosecution for contempt of court for pleading in Parliament for the return of a Family Court-managed child to a couple of his constituents. No names were mentioned, no street, no community, when he made the heartfelt plea in Parliament, but down rained the threats from on high. What we do know about this invisible den of pain and anguish is that around 13,000 cases between warring former loving-ones are held to divvy up the kids each year. Anecdotal evidence suggests that where there is no accord among parties mothers who are not plainly dangerous almost invariably get custody. A great dollop of taxpayers' money is invested in the process. ACT antagonist Muriel Newman last year managed to wrinkle out the scary statistic that New Zealand's most expensive Family Court case had cost nearly \$100,000 in legal aid fees, and climbing, as the case remained unresolved. In the year to May 2002 \$33 million was paid in legal aid to lawyers (at up to \$140 an hour) in Family Court cases — about 40 per cent of all legal aid expenditure. Silver-haired Judge Patrick Mahony is patriarch of this court which came to life in New Zealand in 1981.

Unusually for the judiciary he from time to time gives interviews to defend his court against what he says are misleading claims by fathers' groups. He insists the court is not biased against men, how could it be, many of its judges are men — and they simply heed the law's direction to award custody to the most able parent regardless of gender. He repeats the mantra that family law is created by Parliament and he and others only interpret the will of our politicians. What he doesn't reveal is why the Family Court doesn't keep statistics any more about who gets custody in all proceedings. This regular data collection was snuffed out in the early 90s. Why? Perhaps because it made stark and unpalatable reading? Because of the rising clamour of largely-but-not-totally-male complaint, the government recently had the Law Commission look over the Family Court. The resulting *Dispute Resolution In The Family Court* report made

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135 suggestions amounting to a business-pretty-much-as-usual whitewash. There was a significant plea for more money to enable the court to do its job more quickly and efficiently and to improve staff training to avoid perceptions it is biased. Then the government's curious Care Of Children Bill was introduced to Parliament on June 26. It's a flop that continues to cause a flap. It proposes publication of Family Court proceedings will be relaxed (the suggestion seems to be that media will get suitably censored documents at the court's will), that the Family Court will get more power to enforce its orders and — the knife turner for all those already grief-stricken dads — parents can appoint same sex partners as guardians. So while so many biological dads aren't allowed to be fully functioning dads through order of the Family Court, now the government proposes women can become dads. This reads like some advance case of hysteria. Is there any hope for the lost fathers? There's a small chink of light.

Parliament's justice and electoral select committee begins hearing submissions on the Care Of Children Bill in late July. ACT's Muriel Newman will sit on that committee and is preparing a supplementary order paper supporting the introduction of shared parenting (as the Family Court's automatic default position) and to open up the Family Court. If the committee is satisfied the current bill is wanting it can recommend change. Concurrently there seems to be a heightened level of concern in many corners of the Parliament that the Family Court is in need of reform. Newman has walked this path before, in 2000 and 2001, with two private member's bills.

Then Labour convinced the smaller parties not to support the bills because their own legislation addressing these concerns would be coming. That legislation is the Care Of Children Bill and it does no such thing. There's a strangely curious fact here too about the three people steering this unusual bill to this point: neither Minister of Courts Margaret Wilson, associate justice minister Lianne Dalziel nor justice and electoral select committee chairman Tim Barnett have children. Muriel Newman continues her longtime call for our-Family Court to follow the Australian experience. When public and media were granted entry there in the '80s, cases reaching court plummeted. Opened to scrutiny, families pretty damn quickly found a way to mediate their way out of post-marital problems and legal aid-sponsored appeals dropped away significantly.

Meanwhile the letters keep coming. I continue to hear weekly from the men and increasingly now women (usually disenfranchised grandmothers) who are the grievously wounded survivors of our Family Court. The overpowering thought I'm left with is that perfectly normal, once rational people are quite capable of doing terrible things — possibly even murder — because of what they tell me this court has done to them. And we mustn't think it couldn't happen.

It did as recently as three years ago when a Stoke women took her life and those of her three children because of frustration over the Family Court.



*Photo: Muriel Newman MP speaking at the 2000 Father's Day Parade*

The tragic murder suicide of Rosemary Perkins and her three daughters Alice, Maria and Cherie, aged 8, 6, and 23 months, is a shocking reminder of the urgency of the need for change to New Zealand's family laws.

The present system, based on an adversarial "winner takes all" ideology, encourages conflict and aggression, as parents are driven to fight over the most precious thing in their lives, their children.

Newspaper reports claim that the couple had been in court that morning and that Mr Perkins had been given unsupervised visiting rights with his children. That action of giving a non-custodial father greater access to his children, was apparently a significant factor in the tragedy. It follows the 1995 deaths of Tiffany, Holly and Claudia Bristol, three children murdered by their father who also killed himself during acrimonious litigation, and a 1997 murder suicide of a mother and her two children.

Recently I spoke to a grandmother whose son committed suicide earlier this year - he loved his two children but had only seen them three times in the two years since he and his wife had separated. In the end the loss was too much to bear and he took his own life leaving a note asking his parents to take care of the children. Those parents lost their son and those children lost their father, all because of our adversarial family law.

Well I say - enough is enough. In a civilised society in the 21st century we should not be condoning laws that cause such damage, hurt and bitterness and we should not be condoning laws that turn innocent children into a powerful weapon of destruction.

Thirty years ago in the United States, murder-suicides of parents and their children repeatedly made the headlines. Legislators said enough is enough and they devised a change that took the conflict out of family law. Shared Parenting was the fastest spreading family law change ever to sweep through the United States. Based on the notion that after family breakdown children do better if they have the on-going support of both their mother and their father, shared parenting introduced a co-operative and consensual framework into family law. The result is less acrimony and conflict, less divorce, and more importantly better outcomes for children.

Earlier this year I introduced such a Bill into Parliament. Sadly for the hundreds of thousands of parents locked in conflict, grandparents alienated from their grandchildren, and children caught up in a viscous crossfire between the two people they love most in the world, the government voted my Bill down, refusing to let it go to a Select Committee.

But Shared Parenting is an idea whose time has come, and a father from Dunedin, Tim Hawkins, paid the \$500 to launch a petition to call for a Citizens Initiated Referendum into Shared Parenting. I have pledged my support for Tim's petition, I am now going around the country talking to groups to ask them to support us as we collect the 250,000 signature we need.



# Court Of Injustice

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By 2010 it's expected that three quarters of all Maori infants and half of all Pakeha infants will be growing up in households with no fathers. A growing movement of angry men suggests the legal pendulum in the Family Court has swung too far against fathers who want an equal role in raising children after relationships go wrong.

**LAUREN QUAINANCE** investigates.

Lauren Quainance is a *North & South* senior writer

**NOBODY AT LAW** school ever told Rob the law could be unfair. He was destined to be a commercial lawyer in a small firm dealing with the dry, minutiae of legal contracts but he still subscribed to the high-minded principles he was taught as a student in the mid-1970s. His was a worthy profession. Something to be proud of. So nothing prepared him for what happened when his marriage to his wife broke up in the mid-1990s and custody of their two primary school age children came before the courts. For the first year the estranged couple had a private agreement that meant the children saw their father three weekends out of four and one night during the week. Then, for reasons Rob describes as "vague", the most valid of which was that the children were tired, his ex-wife limited his contact to alternate weekends.

The Family Court would not recognise the agreement his wife signed a year earlier so he formally applied for access. After spending \$8500 on lawyers' bills "without seeing the inside of a courtroom" at a time when he was worst-off financially as he tried to set up a new household, he reluctantly agreed to one weekend per fortnight and school holidays. "I could see it was pitching toward a common result. Whether I was a good father or an indifferent father I was going to get once a fortnight.

"My wife and I were both professionals. We'd both worked and had nannies. I'd bought into the whole message of the 80s so I wiped as many bums and chins as my wife but when it came to the break up I was regarded as a spare parent. The message to fathers has been 'Get involved'. You can't just turn that off when you want to."

Although Rob's own case has been resolved amicably enough — his ex-wife has followed the new agreement reached in the court and he has nothing to gain personally by speaking out (and a great deal to lose professionally because he is seen to be "breaking ranks") — he was left with an uneasy feeling about how the Family Court treats fathers when relationships involving children go wrong.

"I have the dual perspective. I'm a lawyer and I've also experienced it at the coal face. It was a shock to see the systematic bias against fathers there at every turn. When I was lectured in family law in the 1970s we were taught about the 'mother principle', the idea that the mother was best suited to the parenting role. In the mid-70s that was probably right but there's been this sea change in social development. If you see families on the weekends it's the dad that takes the child to the changing room as much as the mother. Yet somehow that's been bypassed by the Family Court. They haven't woken up to the fact we've had this enormous shift in social attitude."

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Worse, he has been shocked by how the principles of "beyond reasonable doubt" and "innocent until proven guilty" he held so dear are totally disregarded in cases where allegations of physical or sexual abuse are levelled against fathers in acrimonious break-ups where the mother may be attempting to punish her partner or win sole custody.

"For whatever reason all that we learned at law school about justice and due process and justice being seen to be done... that's all sacrificed for what's in the best interest

of the child. They justify suspending all these important principles on the basis that the welfare of the child is paramount but my argument is they're not achieving the outcome which is best for the child because a child needs a father. People go into the Family Court as a family and come out with the father detached from the kids."

Is the Family Court really preventing Dads from having a meaningful relationship with their children? Is all the rhetoric about the importance of fathers meaningless when faced with the powerful, politically correct feminist and child protection movements?

And can fathers ever really compete against the mystical "mother-child bond"?

**IT'S NOW MORE** than 30 years since politicians drafted the Guardianship Act, the law that's meant to determine how children will be cared for after a relationship breaks down. It basically says both parents are responsible for children (unless the father isn't living with the mother at the time of the child's birth in which case he has virtually no rights) and introduced the all-important principle that the welfare of the child should be paramount. Since that time, in the late 1960s, divorce and de facto relationships have become commonplace and women have joined the workforce in large numbers. So it's surprising, then, that with a little tweaking over the years the Guardianship Act has largely remained workable in a time of great social change.

When the Family Court was established in 1980 to hear disputes about matrimonial property, custody and access previously heard in public in the District Court, new laws made it easier to obtain a divorce on the grounds of "irreconcilable differences" proved by a couple living apart for two years. The Guardianship Act was amended at the same time to stipulate that children of a failed relationship should be placed with the most suitable parent regardless of that parent's sex or the age of that child.

Last year 9912 marriages in New Zealand ended in divorce and although many de facto and married couples who separate agree on custody and access arrangements for any children of the relationship, last year the Family Court heard more than 14,000 applications for custody and access. (13,517 applications are recorded on the Family Court database but that doesn't include some smaller courts in rural towns).

Because the court's philosophy is to try, where possible, to resolve disputes without resorting to a traditional, adversarial court hearing with expert witnesses and lawyers arguing for both sides, less than 10 per cent of cases proceed to a full defended hearing. Most are resolved in a mediation conference chaired by a judge who is supposed to "mediate" but in practice often actively persuades couples to come to an agreement.

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Because so few cases end in full-blown hearings supporters of the Family Court can claim most cases are settled by "mutual agreement" and that the disaffected men represent a tiny proportion of cases dealt with every year. What that doesn't account for is the many men like Rob who give up before a defended hearing because of mounting legal costs or because they believe the outcome is a *fait accompli*.

It's impossible to say how often the mother walks away with custody of the children because the Department for Courts stopped recording the gender of parents awarded custody in 1990. But at that time, a decade after Parliament passed unambiguous law that the Family Court should be gender blind, mothers were awarded sole custody in 74 per cent of cases where custody was disputed. Fathers won sole custody in 13 per cent of cases. In the remainder children were split up or parents had joint custody.

That probably reflects the prevailing view encapsulated by a 1994 report on the Family Court written by Department of Justice staffers Georgie Hall and Angie Lee. The pair defended sole maternal custody arguing that local and overseas research suggested children who lived with solo mums had emotional, behavioural and educational

difficulties not simply because they only had one full-time parent but because of more “complex reasons” including conflict between parents and the fact the mother was likely to be worse off financially after a separation from a partner.

The report said the “sustained attack” on sole maternal custody was not justified and the “growing enthusiasm” for joint custody in the United States was misplaced because children were no better off than those in the sole custody of one parent and only worked where there was a high degree of co-operation between parents.

The same report suggested fathers may pursue custody as a “sinister bargaining tool” to pressure mothers into reducing their matrimonial property or maintenance claims, suggested unemployed fathers were motivated to apply for custody to get the DPB and said some men pursue custody to punish an ex-partner who broke up with them. Nowhere was any mention made of mothers who pursued custody for financial reasons (to qualify for the DPB, maintenance or matrimonial property) or mothers who pursue custody or control access to punish a man who broke up with them. The underlying assumption seemed to be the women were blameless victims in such disputes and they had to fight off “sinister” attacks on their natural caregiving role.

Christchurch civic creche worker Peter Ellis had been convicted the previous year and hysteria about sexual abuse and particularly “recovered memories” of abuse was at its height. The report acknowledged that while false allegations of sexual abuse may happen from time to time sexual abuse in families was “endemic to our society at a disturbingly high level” — a statement made without reference to any statistics and that appears to unquestioningly accept the now discredited claims made by lesbianfeminist psychologist Miriam Saphira that led to a Telethon in the 1980s based on the idea that “one in four girls will be abused by age 18, half by a member of her own family”.

The views of lawyers who said the standard of proof was too low in sexual abuse cases were dismissed. The report’s authors acknowledged false allegations probably occur, but argued that because a man accused of sexual abuse in custody proceedings would

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not be sent to jail (but would all but lose access to his children) it was best to err on the side of caution because of the danger to children if he were guilty.

Several years had passed since sweeping law changes were made because of the growing realisation that victims of male violence and sexual assault weren’t getting a fair deal. The law was changed to allow men to be convicted of rape and child molestation on the uncorroborated word of women and children. The police stopped treating domestic violence as “just a domestic” and adopted a “believe the victim” approach and began arresting and prosecuting men accused of assaulting their partners. It’s in this climate that the 1995 Domestic Violence Act (DVA) was passed into law. If fathers found it difficult to get joint or sole custody of their children before, the DVA made things considerably more difficult. That’s because the radical piece of legislation with the laudable goal of protecting women and children from violence is preventing ordinary, loving fathers from having a meaningful relationship with their children.

Before the law was changed women who were battered by their husbands or partners could apply for a non-violence order or a non-molestation order under the 1982 Domestic Protection Act. These were difficult to get and well under half the applications for final orders made in the Family Court in 1990 were actually granted.

And just because a man had hit his wife (or vice versa) the prevailing view was that didn’t necessarily mean they were a bad parent who was likely to abuse their kids.

That all changed after Wanganui man Alan Bristol joined his three daughters Tiffany, seven, Holly, three and Claudia, 18 months in the backseat of the family car in his

garage in February 1994, connected a hose from the exhaust to a partially open window and started the engine. Bristol and all three girls died of carbon monoxide poisoning but not before he apparently changed his mind; he was found with an arm outstretched towards the ignition and the key was switched off.

Bristol and his estranged wife were involved in an acrimonious Family Court custody dispute, and despite the fact there was a long history of domestic violence between the pair, he was considered “a loving father” and had interim custody. The day before the killings Bristol was charged with indecent assault and assault on a female after an altercation with his estranged wife when the girls were handed over for access.

The Minister of Justice ordered an independent inquiry by [High Court Judge] Sir Ronald Davison into the Bristol case which was ultimately the catalyst for the DVA. In his report Davison argued that if someone had been violent toward a spouse then there was “good cause to suspect” when the relationship broke down the violence would be redirected toward any children even if they were previously a model parent.

He proposed domestic violence be treated equally to other forms of violence, penalties for breaching non-molestation orders beefed up, stricter enforcement, better mechanisms to protect victims when children were handed over and, crucially, that when a person has been shown to be violent to *either* a child or spouse in a domestic situation then that person must automatically be assumed to be unfit to have custody or unsupervised access until such time as they can prove they are a fit parent.

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**IN THE EVENT** the government went even further than Davison proposed and overhauled our domestic violence laws in several fundamental respects. First, the definition of domestic violence was broadened to include not only physical and sexual abuse but also psychological abuse. Most countries have laws banning “harassment” or “molestation” but no others have quite such a woolly term as psychological abuse. The DVA’s definition of psychological abuse is open-ended: it says it includes but is *not confined to* intimidation, harassment, damage to property, threats of physical abuse, sexual abuse or psychological abuse or allowing children to witness any kind of abuse.

The meaning of the term is widely debated although a Department of Justice/AGB McNair report titled *Hitting Home* released at the same time as the new Domestic Violence Bill was before Parliament in 1995 identified 11 types of psychological abuse. They included smashing or throwing objects, humiliating and threatening a partner and simply putting down family and friends or swearing at or insulting a partner.

Given that it was the same Department of Justice officials advising the government on the new DVA it has to be assumed they, at least, meant for swearing and name calling to be cause enough for a protection order to be granted. This is despite the fact that in the same report the authors admit that the “study of psychological abuse is in its infancy” and there was no evidence to link psychological abuse to physical abuse. Secondly, the DVA established a single act of violence or a number of acts that form a pattern of abuse even if “when viewed in isolation may be minor or trivial” would constitute domestic violence. In other words there was no longer any need to establish a person had a violent history. Under the law a slap delivered after discovering a partner in bed with a lover — or a series of insults — would be treated the same as repeated, sustained beatings leading to hospitalisation of the victim.

The DVA says domestic violence *in all its forms* is unacceptable and legal manuals on the act interpret that as a clear signal “there is no room to argue that any form of domestic violence is morally defensible and the scope for arguing mitigating factors must likewise be reduced”. That means arguing that the abuse — psychological or



physical — was provoked or was a one-off lapse is much less likely to succeed. The act also made it compulsory for spousal abusers to attend an anger management course.

In keeping with Davison's advice, the third most important way the 1995 legislation shifted the goal posts was by stating that violence to a spouse observed by a child counts as violence towards a child and by *automatically* extending a protection order to any children of an applicant regardless of whether they'd suffered any abuse. The Guardianship Act was amended to accommodate the new DVA so when an allegation of violence made under the act or raised in custody proceedings is "proved" (and we'll get to the standard of proof shortly) the court must not award custody or unsupervised access to the violent parent unless it is satisfied the child will be safe. That reversed the presumption existing before the Bristol murders that someone who is a wife beater (or an alleged wife beater) won't necessarily harm a child.

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What has this meant in practice? As well as being easier to get a protection order under the DVA in 89 per cent of the 28,755 applications for protection orders since 1996 (of which nine out of 10 were applied for by women) an order was issued "ex parte" without informing the alleged abuser or holding a hearing where the allegations could be defended. The accused may demand a hearing to challenge the order after being served with it but must do so within three months or it becomes permanent. Lawyers have told *North & South* that in almost all cases the only evidence provided to the court to support an application for an ex-parte order was the complainant's sworn affidavit outlining claims of physical, sexual and/or psychological abuse. Lawyers who apply for ex-parte orders are required to sign a certificate essentially saying the application is a "proper case", a declaration usually based entirely on the lawyer's impression of the applicant's veracity -- something some feel uncomfortable about. Corroborating evidence such as medical certificates, police reports, criminal records or witnesses was rarely available quickly enough to be considered or did not exist. Most protection orders are issued without the judge who signs them off so much as laying eyes on the applicant or her lawyer. Most applications are dealt with by fax or email. "One of the difficulties with the Domestic Violence Act is the speed someone can get a protection order. It's seen to be like Dial A Pizza," says Hutt Valley family lawyer Paul Paino. "You get one in two hours and the police or bailiff serve it within 24 hours and if you want to get that order lifted or changed — or you don't think it should have been made in the first place — it can often take a month or two to get a hearing and in the meantime the person is not allowed to see his kids."

Few men defend protection orders before the three-month deadline when they automatically become permanent, a fact that's been used to suggest most orders are justified and domestic violence is rife. However, the fact that less than 20 per cent of orders are defended may not necessarily mean most men don't bother to front up in court because they're guilty. To be sure, many protection orders will be justified — and indefensible — but many more defences are initiated than proceed to a hearing. That suggests many simply can't afford the legal bills. One of two companion 1999 Ministry of Justice (MOJ) studies found 61 per cent of non-custodial parents were refused state-sponsored legal aid in DVA cases (compared with 15 per cent of usually female custodial parents). Even if legal aid is awarded defendants may be required to make a contribution toward their legal aid bill whereas applicants aren't. This has made it easier for housewives financially dependant on their husbands to escape violent relationships, but it also means men of limited means feel as though their ex-partner has an "unlimited" legal budget while they spend \$8382 on average on lawyer's bills.

That this comes at a time when matrimonial property is being divided up and men face child support payments as well as the cost of establishing a new household for themselves, severely restricts their ability to defend protection orders. (That court delays meant three out of five cases in the 1999 MOJ study dragged on beyond the 42-day period in which a hearing is supposed to be held probably didn't help.)

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*North & South* has learned many lawyers also advise men to think twice about defending the orders. Wellington lawyer David Howman has spent most of his 30 year career practising family law and says while he would always stress to a client that it was his decision, he suggests they carefully consider defending a protection order because of the not insignificant cost and the fact they're "not easy to defend" because the onus is on the respondent to disprove the allegations made.

Like many cases in the Family Court there was often little evidence except the word of the couple in dispute unless the alleged victims had visited a doctor or a refuge. Often violence happened behind closed doors, or was kept quiet, so the court's decision often came down to a matter of which party was most credible.

"It used to be more difficult to prove there had been domestic violence but the emphasis under this new act has been to believe those people who make the allegations and the onus is [on the respondent] to refute them which is difficult to do. A lot of it is in the mind of the beholder. If the victim perceives there is a threat or erratic behaviour then that counts. Judges can take account of that perception."

**ONCE AN ORDER** is served, the man who is alleged to be violent is automatically banned from seeing his children until the court can assess the risk. Lest this be considered a rare occurrence consider that three quarters of applicants for protection orders have children and, in the first three years the DVA was in force, 42,959 children were named on protection orders sought by one of their parents.

When an allegation of violence is made against a father it's likely he won't see his children for months. In the 1999 MOJ survey of 558 cases a third of violent parents had not seen their children six months later. The average period of no access was 15 weeks. (The court says this "hiatus" is partly due to the fact fathers are slow to apply to the court for access after they've been served with a protection order.)

Most of the time there's no suggestion children have been harmed by the "abusive" parent nor is there any suggestion from their mother she fears for their safety. Of the affidavits examined by the MOJ 76 per cent included claims children had witnessed physical or psychological violence toward the mother. In only 24 per cent of cases was it even *alleged* children were abused, neglected or somehow put at risk.

When deciding if allegations are true — and assessing the risk posed to any children — the rules applied in criminal trials don't apply. The Family Court can admit any evidence it sees fit whether or not it would stand up in any other court of law and uses the civil standard of "on the balance of probabilities" rather than the criminal standard of "beyond reasonable doubt". That leads to cases [see *John's Story*] where the police have insufficient evidence to lay charges — or refuse to even investigate — but the Family Court will accept the allegations as true when ruling on custody.

In some cases the court will judge the allegation true *before* criminal proceedings are held and a man found "guilty" in the Family Court might be found not guilty of the same offence in a criminal court. This is despite three American studies showing up to 50 per cent of sexual abuse claims made during custody proceedings were false.

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If the court finds that abuse is "proven" then it cannot award custody to the abusive parent or order anything but supervised access unless it thinks the child will be safe.

Judges frequently base their decisions about how safe a child will be in a parent's care on "little information" according to the 1999 MOJ report. It's reasonably common to refer parties to counselling and appoint a lawyer to represent the child but the report found a social worker's opinion about the child's safety was called for only five per cent of the time and a psychologist's report just two per cent of the time.

When deciding that question the scales are weighted further against men because the court must consider whether the custodial parent *thinks* the child will be safe with the non-custodial parent. This shifts the power back into the hands of a mother who may have fabricated the allegations, is paranoid or mistakenly believes abuse occurred. Even in cases where the court concedes an allegation has not been proven, the law allows it to err on the side of caution. If the court decides there isn't enough evidence (even by its own looser standards) and believes there is a risk to the child it can impose any order it likes. Usually it will order two hours supervised access per fortnight — equivalent to just over two days a year — and father is only permitted to see his children in a court-approved centre where he is closely supervised by staff.

Although meant as a temporary measure until the father can prove the child would be safe with him (and many question how it's possible to prove such a thing especially when the mother's perception of the child's safety is given weight) *North & South* has learned of cases where fathers have not seen their children outside a supervised access centre for several years because the mother won't agree to have a relative (even one of her own) supervise him. Some men refuse to see their children altogether rather than submit to the "false and unnatural" environment of the centres they say is akin to being visited in jail. Some fight the order in the courts; others walk away entirely.

When women fail to deliver children to see their fathers as agreed the system is apparently inept at forcing them to comply with court orders. It's possible to apply to the court for a warrant to have the children uplifted by force but, as well as not wanting to put children through such a traumatic experience, the police are often reluctant to get involved. One man has gone to court 17 times to get a warrant to have his children delivered as per the court's agreement [see *Duncan's Story*.]

Meanwhile, police will not hesitate to lay charges if a protection order is breached.

Recent cases include:

Wellington computer engineer William Donachie pleaded guilty to a charge of breaching a protection order after sending his then 12-year-old daughter an "inoffensive" Christmas present of a leather vest, key ring and wallet. He had not seen his daughter for more than two years. [He was given a suspended sentence].

A man (whose name is suppressed) was given a discharge without conviction in the Invercargill District Court after sending his daughter a Christmas card from jail.

**AS A LAWYER** Rob — who was never accused of any violence himself — is troubled by how far the pendulum has swung against men. As a father he is outraged.

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He suggests the following is a common scenario: "A wife has decided to leave her husband to take up with somebody else. Most people will have a response which, for that moment in time, is possibly threatening to the other party. She goes off and gets a protection order which immediately covers the children. He might be a totally loving father but he is immediately injunctioned from being a father to his children.

"Most orders are issued ex-parte and that runs against the due process of law; a decision shouldn't be made against you without you being heard. That fundamental principle is not working in the Family Court. I wouldn't have an objection to that if there's a threat of real violence as long as within a week you could be heard but sometimes this goes on for months and months and sometimes years before there's a

full hearing and in the meantime you're ordered to do an anger management course. "Judges are terrified of getting it wrong. We've had cases like the Bristol case in Wanganui and the Perkin case in Nelson where children have been murdered by their parents (the father in the first case, the mother in the second) after a Family Court decision. The legal profession is by its nature very conservative and cautious so judges and lawyers will kick for touch every time.

"If you're lucky you'll get to see [your children] in a church hall with somebody from Barnados listening to your every question, censoring you in case you're trying to get information about their mother. You'll probably get two hours at the most once a fortnight and you'll likely pay \$50 a time for the privilege. If you're not truly a violent man that's an outrageous disruption of your relationship with your kids. Your kids think there's something wrong with dad because it's like visiting him in jail."

Separated Fathers' Support Trust secretary Bevan Berg left the police force in the mid-1980s and now runs his own freight business in Auckland. We are not permitted to publish the particulars of his case except to say he was "stunned" by his own experience after he left his wife in 1995 and he has spent considerable time analysing the DVA in the sober, measured manner that an ex-cop can bring to the task.

Having visited enough "domestics" in his time as a beat cop he accepts there is a genuine need for a law to protect against men (and women) who beat their partners and says his comments are not an attempt to excuse or in anyway condone violence. However, he's concerned that where children are involved the law errs too heavily on the side of caution, doesn't properly examine claims and appears to take the view that women are beyond reproach, that women don't lie and they're certainly not violent.

"There's a pretty wide interpretation of domestic violence which can come down to waving a finger at someone or slamming the door. It doesn't take much to make that finding. Judges tend toward a convenient safety point. If you look at the outcome of [custody cases involving the DVA] the default position is always supervised access." Berg suggests the DVA has been used cynically by lawyers who employ it as a "tactic" to win custody because a man accused of violence will be tarnished in custody proceedings. And he wonders why when the safety of the child is paramount older children are not asked whether they think they will be "safe" with their fathers.

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The crux of the men's complaint about the Family Court is this: it appears to operate under entirely different rules than any other court and in the name of "child welfare" — a principle they claim to support — runs roughshod over their right to a fair hearing. The court already assumes men are capable only of being "weekend dads" so it is seen as no great loss to limit them to two hours supervised access a fortnight.

Underpinning all this seems to be the quaint assumption that women are nurturers and aren't violent. It's the kind of thinking that means we still have a criminal charge of male assaults female but no equivalent charge of female assaults male. Studies on domestic violence in this country paid for by government departments make scant or no mention of the problem of women's violence toward men. And we only need look at the high-profile child abuse killings in the last year or so, and note that females were the sole perpetrators in at least three cases, to know women kill children.

And it's not just the occasional crusader expressing concern about the brand of justice delivered in the Family Court. The fledgling men's movement is comprised of about a dozen organisations across the country with names such as Caring Fathers, Men and their Children, Separated Fathers Support Trust and FARE (Fathers Apart Require Equality.) Some organisations were formed in the 1980s but the movement was given impetus by the passing of the 1993 Child Support Act which, among other problems,

badly disadvantaged non-custodial parents who started a second family. Exact numbers of men involved is difficult to gauge but the Men's Centre North Shore has 370 subscribers to its monthly newsletter *Menz Issues* around the country and another 170 hits per week on its website from which the newsletter can be downloaded.

Alliance MP Liz Gordon described the disaffected men to the *Assignment* television programme last year as the “knit sweater brigade” rather than “sharp suits” who possibly blamed their lack of success in life on their marriage break-up. During research for this story *North & South* spoke with architects, lawyers, policeman, exjournalists, small businessmen as well as beneficiaries concerned with the status quo.

Some are undoubtedly obsessed with getting better access to their children even going so far as quitting jobs, shifting to smaller homes and spending all their capital to “get justice”. And the disparate movement is split over how to best achieve its goals: some have targeted “menophobe” Family Court employees by pasting signs outside their homes, others have threatened the lives of judges or police and some favour a campaign of “civil disobedience” including refusing to pay child support.

Whether they can become a serious political force will largely depend on whether it evolves into a coherent national movement and if the sometimes intemperate men on its fringe who do themselves a disservice by downplaying the effects of domestic violence — or attacking the women's refuge movement — can be brought into line.

Bruce Tichbon, the Wellington telecommunications consultant who spearheaded the campaign that led to a government review of the 1993 Child Support Act, knows that what he prefers to call the “families movement” needs a strong and credible leader.

Although he's willing to do the job his body isn't: he developed chronic fatigue syndrome about two years ago and is simply unable to get out of bed some days.

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“The women's movement has grossly out-performed the men's movement,” he says bluntly. “I think the women's movement is too militant, I think they do a tremendous amount of damage to society but they're a brilliant political movement. Basically the problem with the men's movement is they've been out organised and until they get their act together, and show the politicians they can match the women's movement at the ballot box, then men are going to continue to get a rough deal.”

**WHEN THE** Family Court opened for business in 1981 Patrick Mahony was one of the first judges sworn in and in 1985 he was appointed the court's chief judge. Entry to his offices on the eighth floor of an office tower on The Terrace is controlled by swipe card and the atmosphere is sterile and hushed except for the sound of air conditioning. On his bookshelf a copy of *Fathers After Divorce* by Michael Green QC — one of the most trenchant critics of the Australian Family Court — is prominently displayed. The silver-haired, patrician Mahony is flanked by a young lawyer who introduces himself as the judge's assistant and judicial communication's adviser and former journalist Neil Billington. Although interviews with judges are rare, Mahony agreed to an interview that ran well over the 45 minutes allocated because he's anxious to defend the court against what he says are “misleading” claims made by fathers' groups. Mahony denies the court is biased against fathers and says judges heed the law's direction to award custody to the most able parent regardless of their gender. He's adamant the court is not stuck in a time warp but is reflecting social change that means men are now more involved in the day-to-day parenting of children. Shared parenting is an idea that first emerged in the 1970s and 1980s and he claims the “vast majority” of arrangements made by parents could be described as shared parenting or shared custody. However, this claim turns on a question of definition: Mahony certainly isn't saying most children split their time equally between separated parents.

“Some people think of shared parenting or shared custody as the amount of time each parent spends with a child and a lot of people that come to court are looking at balancing up so many hours of the week with one parent and so many with the other. What we try and do is look at it from the child’s point of view. Very often you will get a situation where children will live during the week with one parent but spend the weekends with the other parent and will often spend half the school holidays with each parent and there will be special arrangements for Christmas and birthdays.”

Where the court becomes less flexible, however, is in cases where there is a high degree of acrimony between the separating couple. In those cases the court is unwilling to have children moving between the two parents too regularly because children are unsettled if parents can’t agree on common routines and rules. On the face of it that sounds like a gift to a parent who doesn’t want anything to do with their ex-partner; if they’re difficult the court will limit access for the children’s sake.

In a landmark case last June, Judge Inglis awarded shared custody to a Tauranga man and said the mother’s “personal reluctance” or “personal agenda” about access shouldn’t be enough to prevent both parents fulfilling their obligations as guardians.

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Of the decision Mahony says: “That’s a fair enough statement but generally speaking if a child is to flourish in an arrangement where there is frequent movement from one home to the other parents do have to get on reasonably well in that they have to support one another. Those arrangements don’t work well if a child is aware of acrimony in the background or if a child is aware one parent is trying to derail the other parent.” He says if one parent is obstructive the court may give custody to the most flexible parent, the one most likely to accommodate the other parent.

Mahony concedes the court doesn’t do a very good job at enforcing its own court orders when a parent persistently fails to deliver children to the other parent. It can issue a warrant to have children collected by police but Mahony wants law similar to that recently introduced in Australia where the court can force a recalcitrant parent to undergo counselling and, failing that, be fined or jailed for flouting its orders.

And what about the question of allegations levelled by one parent against the other in custody disputes? Is justice being denied to men in the name of the child’s welfare?

Mahony denies the definition of violence is too loose and is particularly adamant that despite being possible under the legislation, protection orders are not awarded for “slamming doors” alone although such a claim might be part of a series of allegations. Because the welfare of children was paramount there were likely to be cases where the police won’t lay charges but an allegation is found to be “true” in the Family Court, he says. “There is a completely different process for gathering evidence and there is a much higher test of beyond reasonable doubt [in the criminal courts]. And there are no doubt cases where the police don’t have enough evidence to bring a charge of male assaults female but it would nevertheless be imperative for the Family Court to make an order to provide protection for that person and the children of the family.”

As for whether there is an inherent assumption women aren’t violent — *North & South* knows of two cases where a woman admitted she hit her partner or, in one case, struck her partner in front of a court counsellor but escaped without any punishment —

Mahony says the court only reacts when allegations are formally presented to it. If men are abused by women then, he suggests, they need to overcome any shame or embarrassment and themselves apply for protection orders under the DVA.

Mahony has said Parliament has put “such a premium” on cases of domestic violence it has given the court no discretion at all to distinguish between different types of violence (such as the difference between a slap delivered after discovering infidelity

and life-threatening violence) or to impose anything but supervised access unless it can be satisfied the child will be safe with a parent proved to be violent.

**OF COURSE** our morass of family law is the creation of Parliament and Mahony only interprets the will of our politicians. There has been spasmodic debate about these issues during this term of Parliament as two private members' bills sponsored by ACT MP Muriel Newman have been drawn from the parliamentary ballot. Her bill to open the Family Court to public scrutiny and limited media coverage, except in special circumstances where the judge opts to close the court, was thrown out by Parliament in February but it was Newman's failed Shared Parenting Bill, defeated in the House in mid 2000, that would have brought about the most substantive change.

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Had the bill become law it would have made shared custody the norm, required corroboration for allegations and reversed the assumption introduced after the Bristol murders in Wanganui that a violent partner is probably a violent parent.

Motivated by the view that fatherlessness is the "most serious social syndrome we'll face this century" Newman wants the Family Court's default position to be shared parenting unless one parent can be proved unfit (using legal rules that better resemble those in the criminal court) or is somehow unable to fulfil their obligations. It's not, as some critics portrayed it, a loony right-wing fad but is, in fact, the law in 48 American states and there is a well-organised and researched global shared parenting movement. Newman argues that when one parent can't threaten the other with "taking away the kids" disputes are much less acrimonious and optimistically suggests both parents are able to put differences aside and start to work together for the good of the children. Although it might be assumed children are "shunted from pillar to post" under shared parenting, Newman says parents make dozens of different arrangements.

"I met a Dad who spent three years battling in the courts to get shared parenting. He employed three QCs, had seven court cases, spent over \$120,000 and now has the children for three days a week and lives just around the road from his ex-wife. And you just say shouldn't that have happened of right? And what if he didn't have the money? He would have just been another of the walking wounded. It shouldn't be about resources, it should be about the right of a child to have a mum and dad."

What was so wrong with the bill that the government wouldn't even send it to select committee? After all, the idea that both parents should automatically be considered equal custodians seems like a perfectly reasonable one? Attorney General Margaret Wilson told the House during the debate in May 2000 that the bill assumed separating parents could reach agreement when, clearly, that hadn't been the case in the past. In other words she disagreed with Newman's idea that when the law said a 50/50 split was the starting point for negotiation, couples would calmly and rationally make agreements that involved both parents playing a significant role in a child's life.

There was also concern the bill focussed too much on parents' rights when the whole thrust of family law internationally over the past few decades has been on the importance of children's rights. There is also, it must be said, a degree of cynicism on the government benches and among National Party opposition MPs about Muriel Newman's ability to turn the heart-tugging stories of the men's groups into coherent legislation. "Muriel has been captured by the men's groups," says one opposition MP. Margaret Wilson said the government supported the bill's principle — to improve the welfare of children — but said it believed it was time there was a comprehensive review of the 30-year-old Guardianship Act and practices of the Family Court.

Adamant that this is a genuine review rather than a smokescreen designed to justify legislation already "in the bottom draw", the government is expected to signal any law

changes it will introduce later this year.

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Meanwhile, Muriel Newman is redrafting her Shared Parenting Bill so it can be resubmitted to this year's parliamentary ballot. She is considering an amendment to the Guardianship Act instead of a stand-alone bill.

All of which is unlikely to change much for fathers like Rob. He's acutely aware he enjoys comparatively generous access to his two children compared with men subject to DVA protection orders — he meets their teachers, has access to school reports and photographs of milestones he's unable to share — but still he knows as each fortnight passes his impact on their character and values fades a little more. He says he mostly feels he's still a father, not "a visitor in their lives" — but only just.

### \*\*\* John's Story

For the first five months after John, a 45-year-old North Shore computer technician, left his wife in 1995, he visited her and his three-and-a-half year old daughter every day. "I was quite happy for our relationship and my support to the family to continue after I left, so I visited every day and supplied them with as much money as they needed. There were no substantial arguments of any sort I can remember in the six months after I left and in many ways I thought I'd done the right thing."

Then in early 1996 his wife, who was seeking custody of their daughter Angela, accused her former husband of sexually abusing their daughter and applied for a nonmolestation order (now called a protection order). His wife claimed Angela had told her "Daddy touches me on the wee wees" and "I don't want Daddy to come here anymore."

"My wife had a psychological history, had attempted suicide and been in institutions for months on end. I never held that against her but I think that was combined with the kind of books she was reading about children being sexually abused by their fathers all that stuff that was raging in the 80s. I remember seeing [the books] lying on the bed but I didn't really pay any attention to them." His wife had also loaned children's books with titles such as *What's Wrong With Bottoms* and was reading them to their daughter.

Doctors at Starship Hospital found no physical evidence of abuse and a 25-minute video interview with a specialist sexual abuse investigator yielded no allegations from Angela. A second 40-minute interview with a different interviewer a few weeks later, however, resulted in Angela giving an "accurate description of alleged oral sex by her father".

John says there are either innocent explanations for things described by his daughter or they must be scenarios gleaned from the books her mother was reading to her. When Angela said he touched her "wee wees" he believes she was referring to him checking if her nappies were wet and references she made to seeing her father's bottom may be explained by her seeing him injecting insulin he required for his diabetes into his buttocks.

Despite disagreement between psychologists about the reliability of the video evidence — and the fact the use of evidence from children as young as Angela is now largely

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considered inadmissible — and the police decision not to lay criminal charges, the Family Court ruled John could only see his daughter with professional supervision. A transcript of the judge's decision reveals he believed it was a case in which "no confident conclusion" could be reached but decided there was a "moderate element of risk" John had abused Angela and that she would be at risk in his care.

Repeated attempts to have the court order lifted so John might have something



approaching a “normal relationship” with his daughter have been rebuffed.

“I went to court seven times, I even had an expert witness from America who specialised in my wife’s disorder testify on my behalf. I did everything legally possible but no matter what I did I was shot down. My legal expenses have reached \$40,000 and I’ve got nothing for that \$40,000. I was no further ahead after two years of fighting than if I’d never bothered to defend it in the first place. I’ve got two hours supervised access a week.”

John hasn’t seen his daughter outside the confines of a supervised access centre for more than five years. He believes he’s being punished for his ex-wife’s “delicate psychological state” because in a 1997 decision the judge said if access was unsupervised that would so distress his ex-wife she would be unable to be an effective caregiver to the daughter.

“The impact on my relationship with my daughter has been substantial. We had a very close relationship, she was my first child and I was very interactive with her. Pretty much all of that is gone now. Parental alienation has set in and I think it’s got worse as time has gone on. I believe my daughter has been severely damaged, not only because she now believes she was sexually abused, but by not having access to both parents.”

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### **Brian’s Story**

When Brian was served with a protection order under the Domestic Violence Act for “emotionally and verbally” abusing his ex-girlfriend in 1997 he couldn’t believe any judge would really prevent him from seeing their 18-month-old daughter because of it. So he ignored it. It’s a decision he sorely regrets; he’s seen his daughter for six hours in four years and she now probably calls his ex-girlfriend’s new husband “Daddy”.

A Wellington salesman turned consultant to men and women embroiled in Family Court cases, Brian began a relationship with Diane in 1993 although they lived separately. Their daughter was born two years later and although she spent time with both parents, and was given her father’s surname, the couple continued to live apart. When he ended the relationship in 1997 Diane filed an application for a protection order. In her affidavit sighted by *North & South* she alleged there was “physical violence from time to time” but makes it clear her main reason for applying for the order was the “emotional and verbal abuse” she alleges she suffered at his hands.

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In her affidavit she claimed Brian had “mood swings and can be very manipulative. I believe he plays mind games with me. He also swings between being very angry and aggressive and turning to being romantic. The changes can happen very quickly.” Included in the affidavit were claims Brian kicked, punched and broke a chair over his then 13-year-old son from a previous relationship and the partner he had before Diane. Neither of these claims were backed up with statements by his son and former partner and both later told the court those claims were entirely untrue. The fact Brian had volunteered to do a Living Without Violence programme after it was suggested by a counsellor, was cited as proof he had in fact been violent.

“I entered into the Living Without Violence programme because I agreed I had been [psychologically] abusive as the relationship broke down. I became frantic when I was told she was seeing someone else and I thought I’d lose contact with my daughter. But I absolutely wasn’t violent. I never hit her. I never did any violent act against her.”

Because the protection order was not defended within three months it automatically became permanent. In the first few months it was in place Brian was arrested and charged with breaching a protection order by driving past Diane’s house. He spent a night in the Porirua police cells and, despite the advice of his lawyer, pleaded not guilty

to the charge in court. Eight months later, after providing irrefutable records he was at work at the time of the alleged incident he was found not guilty.

Brian says his solicitor advised him not to apply for access while his daughter was so young as it would “do no good” but when his daughter was four in 1999 he filed an application for access and was awarded 90 minutes a fortnight supervised by Barnados.

“Diane decided on some weekends she was busy or going away so the access wouldn’t happen and gradually it ended up being months between visits. That’s when I realised it was futile. I said ‘this is not doing my daughter any good to be reintroduced to me and then torn apart again.’ I said ‘this isn’t working’.”

He quit the supervised access programme after four months having seen his daughter three times. Brian’s case is complicated by the fact he was not living with Diane when their daughter was born so he has no rights as a legal guardian despite the fact he is listed on her birth certificate as the father and his daughter legally has his surname. That means since Brian last saw his daughter, and decided to concentrate on having the protection order withdrawn, Diane has remarried and moved to the South Island. He has no idea where she is, has no contact by phone, is unable to send birthday or Christmas presents and has no input into her schooling, diet or religious affiliation. His three children from his previous marriage aged 10 to 20 have been denied a relationship with their half-sister and she doesn’t know his family.

With the support of his new partner Katharine, a registered nurse who says Brian is a “hands-on, loving father” to his children and role model to her own nine-year-old son, he has filed an application for unsupervised access during school holidays. The Domestic Violence Act is, Brian says, a “fine piece of legislation” and he accepts there

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should be some means for psychological abuse to be recognised, but there needs to be more careful scrutiny of such claims especially where custody of children is at issue.

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### **Duncan’s Story**

In the seven years since Duncan split up with his first wife in 1994 it has been a battle of wills: he has been to court a staggering 50 times and has had warrants issued for the police to collect his two sons — and deliver them to him for scheduled access — 17 times.

Accused of sexually abusing their sons then aged 18 months and three-and-a-half when the marriage soured, it took police only a cursory examination of the allegations to decide there was nothing solid enough to put the 37-year-old Auckland engineer before a jury. But six years and \$80,000 later, Duncan is only beginning to have something resembling normal access to his sons.

“We’d been having marriage problems and seeing a marriage guidance counsellor when my wife decided she didn’t want to share custody of the children. She made these allegations and was completely supported by CYFS and counsellors. The whole industry thrives on it.”

Duncan defended the non-molestation order taken out against him and made a counter application for custody of his sons. Despite having no evidence except the word of his ex-wife — and fantastic sexual allegations against no fewer than eight male and female members of his family — Duncan was found to present an “unacceptable risk”.

For two years Duncan was only permitted to see his sons once a fortnight in a supervised access centre. His ex-wife repeatedly ignored the court’s order to deliver the boys for scheduled supervised access. The police were reluctant to get involved and Duncan went back to court 17 times in 12 months to apply for warrants for the

children to be collected by force. His ex-wife was eventually charged with obstruction but was discharged without conviction.

Two years after the allegations were made the court finally ruled the boys should be in Duncan's care from Friday until Sunday once a fortnight but he must be supervised by a member of his family and they're not permitted to stay overnight with his new family. Just toddlers when he last spent more than a few hours with them, his sons are now nine and 10. He has struggled to pay \$80,000 in costs (a sum that could have been much higher; he has represented himself in many of his 50 court appearances.) Fortunately he says his boys are "very adaptable" and have accepted they have "two different lives".

Despite his so-called rights as his sons' legal guardian under the Guardianship Act (a "worthless piece of paper") it rankles he has no say in decisions about their lives including where they go to school, what they eat and what sports they play.

"It's too easy to benefit from false allegations," says Duncan, "I think the domestic violence legislation has thrown up a situation where allegations that would normally

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have been made to the police — and subject to a proper investigation — are now made under the Domestic Violence Act because it's much easier to make allegations, they're not examined and the wife gets custody of the children. Any woman who has reasonable intelligence can hold the court to ransom. A woman has to really stuff up — or get bad legal advice — for custody not to go in her favour."

**Judges pressure onto defendants in DV caught hearings - integrity?**

**DV judgements quotes**

**Weighing and Balancing the consequences**

**Present status of the Final Solution 1995 to 2008**

## ***Does Father Absence Affect Girls Age of Puberty and risk of teenage Pregnancy?***

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### **Quality of Early Family Relationships and Individual Differences in the**

### **Timing of Pubertal Maturation in Girls: A Longitudinal Test of an**

## **Evolutionary Model**

In an 8-year prospective study of 173 girls and their families, the authors tested predictions from J. Belsky, L. Steinberg, and P. Draper's (1991) evolutionary model of individual differences in pubertal timing. This model suggests that more negative-coercive (or less positive-harmonious) family relationships in early childhood provoke earlier reproductive development in adolescence. Consistent with the model, fathers' presence in the home, more time spent by fathers in child care, greater supportiveness in the parental dyad, more father-daughter affection, and more mother-daughter affection, as assessed prior to kindergarten, each predicted later pubertal timing by daughters in 7th grade. The positive dimension of family relationships, rather than the negative dimension, accounted for these relations. In total, the quality of fathers' investment in the family emerged as the most important feature of the proximal family environment relative to daughters' pubertal timing.

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The onset of pubertal development has typically been viewed as an important marker of the transition into adolescence and is accompanied by major social and cognitive changes (J. J. Conger, 1984; Feldman & Elliot, 1990). Variations in the timing of pubertal maturation in levels of physical and sexual development of adolescents compared with their same-age peers have received considerable research attention. The most consistent finding to emerge from the literature is that early onset of puberty in girls is associated with negative health and psychosocial outcomes. In particular, early maturing girls are at greater risk later in life for breast cancer (e.g., Kampert, Whittemore, & Paffenbarger, 1988; Vihko & Apter, 1986) and unhealthy weight gain (e.g., Ness, 1991; Wellens et al., 1992); have higher rates of teenage pregnancy (e.g., Manlove, 1997; Udry & Cliquet, 1982); are more likely to have low-birthweight babies (Scholl et al., 1989); and tend to show

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more disturbances in body image, to report more emotional problems such as depression and anxiety, and to engage in more problem behaviors such as alcohol consumption and sexual promiscuity (e.g., Caspi & Moffitt, 1991; Flannery, Rowe, & Gulley, 1993; Graber, Lewinsohn, Seeley, & Brooks-Gunn, 1997; Mezzich et al., 1997; Susman, Nottelman, Inoff-Germain, Loriaux, & Chrousos, 1985).

Although a good deal is now known about the sequelae of variations in pubertal timing in girls, relatively little is known about the social and psychological antecedents of this variation. Recent theory and data (e.g., Belsky, Steinberg, & Draper, 1991; Graber, Brooks-Gunn, & Warren, 1995) have suggested that an individual's experiences during childhood may influence the physiological mechanisms that initiate and control pubertal development. In this article, we examine antecedents of pubertal timing in adolescent girls in a community sample that has been followed prospectively from preschool through adolescence. We tested predictions from an evolution-based theory of the development of female reproductive strategies. These predictions concern the relation between the quality of early family relationships and individual differences in the timing of pubertal maturation.

#### **Sources of Variation in Pubertal Timing**

Individual differences in the timing of pubertal maturation are influenced by both genes and environment. Genetic studies using twin designs have suggested that genotypic effects account for most of the variation in menarcheal timing and that the remaining variance is attributable to nonshared environmental effects (Kaprio et al., 1995; Treloar & Martin, 1990). Given the apparent absence of shared environmental effects on menarcheal timing, one might



ask, is a psychosocial model of the phenomenon necessarily

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We believe that the answer to this question is no, for several reasons. First, ; both Kaprio et al. (1995) and Treloar and Martin (1990) found that at least half of the genetic variance in age of

menarche was nonadditive. As Meyer, Eaves, Heath, and Martin

1910 pointed out, this nonadditivity would tend to obscure any possible shared environmental variance in menarcheal timing. Meyer et al. suggested that alternatives to traditional twin designs

(e.g., studies of unrelated girls reared together) are needed to detect

effects of shared environment. Second, alternative methods have

produced evidence of shared environmental influence on age of menarche. Specifically, Farber (1981) reported that monozygotic twins reared together were most similar in menarcheal age

(M

difference = 2.8 months), followed by monozygotic twins reared apart (M difference = 9.3 months), followed by dizygotic twins reared together (M difference = 12.0 months). That monozygotic twins reared apart were most similar in menarcheal timing to dizygotic twins reared together suggests that individual differences in age of menarche may be influenced by the degree to which girls share common environments (as well as common genes). Third, the types of environmental influences posited by the present psychosocial model of pubertal timing are likely to be nonshared. This is because a shared environmental effect in a behavior genetic design, by definition, has to be one in which the environmental factor is proportionally equivalent across siblings in the same home (Perusse & Boulerice, 1998). Parent-child processes, which are central to the current model, vary substantially across siblings (e.g., Sulloway, 1996). Finally, it has been well documented in past research that the timing of pubertal maturation in girls is sensitive to a variety of external factors, such as exercise and nutrition (reviewed in Graber et al., 1995).

In sum, behavior genetic theory and data do not preclude the possibility of psychosocial influences on girls' pubertal timing. These influences may include such factors as stressful family relationships, father absence, and exposure to unrelated adult males (see, e.g., Belsky et al., 1991; Ellis & Garber, in press; Graber et al., 1995). The present article specifically focuses on psychosocial antecedents of variation in pubertal timing in young adolescent girls.

Draper and Harpending's (1982, 1988) Evolutionary Theory of Father Absence and the Development of

#### Female Reproductive Strategies

Draper and Harpending (1982, 1988) proposed an evolutionary theory of the role of father absence in the development of female reproductive strategies. This theory formed the foundation of Belsky et al.'s (1991) model of psychosocial factors in the onset of puberty. Draper and Harpending (1982, 1988) posited that individuals have evolved to be sensitive to specific features of their early childhood environments and that exposure to different environments biases individuals toward acquisition of different reproductive strategies. Specifically, Draper and Harpending (1982, 1988) proposed that an important function of early experience (during approximately the first 5 years of life) is to induce in girls an understanding of the quality of male-female relationships and the father's investment in the family. According to the theory, this understanding has the effect of canalizing a developmental track,

which has predictable outcomes for girls' reproductive behavior at maturity. Girls whose early family experiences are characterized by discordant male-female relationships and relatively low paternal investment (e.g., divorce, unreliable provisioning or child care by the father, and "male bashing" by the mother) perceive that male parental investment is not crucial to reproduction; these girls are hypothesized to develop in a manner that accelerates onset of sexual activity and reproduction, reduces reticence in forming sexual relationships, and orients the individual toward relatively unstable pair-bonds. In contrast, girls whose early family experiences are characterized by more harmonious male-female relationships and relatively high paternal investment (e.g., marital stability, marital satisfaction, reliable provisioning by the father, and involvement by the father in child care) perceive that male parental investment is important to reproduction; these girls are hypothesized to develop in a manner that slows onset of sexual activity and reproduction and increases reticence in forming sexual relationships, facilitating the formation of relatively long-term pair-bonds with reliable and nurturant mates (Draper & Harpending, 1982, 1988). Either way, the girl "chooses" a developmental track that in the adult social environment into which she is born would have been likely to promote reproductive success during human evolutionary history.

The data on father absence and the development of female reproductive strategies are largely consistent with Draper and Harpending's (1982, 1988) theory. Specifically, adolescent girls in father-absent homes tend to show precocious sexual interest in boys, to express negative attitudes toward males and masculinity, and to show relatively little interest in maintaining sexual and emotional ties to one male (Belsky et al., 1991; Berezkei & Csanaky, 1996; Draper & Harpending, 1982; Flinn, 1988; Hetherington, 1972).

Belsky et al.'s (1991) Evolutionary Theory of  
Family Ecology and the Development of

#### Female Reproductive Strategies

Belsky et al. (1991; see also Draper & Belsky, 1990) made two relevant additions to Draper and Harpending's (1982, 1988) developmental theory of female reproductive strategies. First, Belsky et al. broadened the scope of the predictor variables. Whereas Draper and Harpending (1982, 1988) emphasized that children experienced early socialization with their "antennae" tuned to the quality of male-female relationships and paternal investment, Belsky et al. expanded this conceptualization to include more generally the availability and predictability of resources in the environment, the trustworthiness of and treatment by significant others, and the enduringness of close interpersonal relationships. The revised theory now focused on the general conditions that stressed children, such as poverty, single parenthood, marital discord, and harsh, rejecting, inconsistent parenting (whether from the father or mother). Belsky et al. ordered these stressors in a causal chain: Within the general ecology of the family, contextual stressors (e.g., low socioeconomic status (SES), single parenthood, and stressful life events) were hypothesized to foster more negative and coercive family relationships, which in turn were hypothesized to provoke a more precocious and promiscuous reproductive strategy. Conversely, more supportive ecological contexts were hypothesized to foster more positive and harmonious family relationships,



which in turn were hypothesized to promote a later developing and more monogamous reproductive strategy. Second, Belsky et al. (1991) added a new outcome variable to the theory: puberty. Whereas Draper and Harpending (1982, 1988) focused only on predicting psychological and behavioral development, Belsky et al. (see also Surbey, 1990) extended the cast of the theoretical net to include physical development. Specifically, they conceptualized early pubertal maturation, precocious sexuality, and unstable pair-bonds as integrated components of an underlying reproductive strategy that functioned to promote reproduction at a relatively early age, without the expectation that paternal investment in child rearing would be forthcoming and without the precondition of a close, enduring romantic relationship. The re-vi-sed theory now included the novel prediction that girls whose early experiences in and around their family of origin are charac-terized by relatively high levels of stress (or low levels of support) will develop in a manner that accelerates pubertal maturation within the individual's range of plasticity.

#### Quality of Family Relationships and the Timing of

#### Pubertal Maturation in Girls

Our study centered on the hypothesized relation between quality of family relationships and girls' pubertal timing. Past research on this topic has focused largely on the relation between pubertal timing and either (a) the dimensional quality of family relation-ships or (b) the social address of father absence.

#### *Quality of Family Relationships*

Do relatively high levels of family stress (or low levels of family support) accelerate pubertal development in girls? To adequately address this question, one must assess the quality of family rela-tionships prior to adolescence, followed by assessment of pubertal timing during adolescence.' Moffitt, Caspi, Belsky, and Silva (1992) used this design in their longitudinal study of New Zealand girls and found a significant correlation between mothers' reports of conflictual family interactions, assessed when daughters were age 7, and daughters' reports of menarcheal age, obtained at age 15. Consistent with Belsky et al. (1991), Moffitt et al. found that greater early family conflict predicted earlier menarche.

Other longitudinal research has assessed levels of conflict and cohesion among family members after the daughters were already at least 10 years old and then prospectively studied its relation with later pubertal timing (Ellis & Garber, in press; Graber et al., 1995; Steinberg, 1988; Wierson, Long, & Forehend, 1993). These studies must be interpreted with caution, however, because by age 10 the hormonal changes that underlie pubertal development have already begun (McClintock & Herdt, 1996); thus, it is possible that these hormonal changes are causing increased distance or conflict in family relationships, rather than vice versa. Nevertheless, Stein-berg (1988) found that greater distance in the mother-daughter relationship accelerated the speed of daughters' pubertal matura-tion. Similarly, both Ellis and Garber (in press) and Graber et al. (1995) found that greater family dysfunction was associated with earlier pubertal timing in daughters. Furthermore, Wierson et al. (1993) found that greater frequency of conflict between parents was associated with earlier menarcheal age in daughters.

In sum, most research has supported Belsky et al.'s (1991) hypothesis that greater stress in the family environment is associ-ated with earlier pubertal timing in girls. Only one study, however, has used the kind of long-term, prospective design (following individuals from early childhood to adolescence) that is really needed to test the theory (Moffitt et al., 1992). The absence of long-term studies is especially problematic because Belsky et al. specified the first 5-7 years of life as the time of sensitive-period learning of reproductive strategies. In addition, previous research has relied on questionnaire measures of the quality of family relationships. This is problematic because the relation between quality of parental caregiving and child outcomes tends to emerge most strongly when parental caregiving is assessed through inter-views or observations, rather than through questionnaires (Roth-baum & Weisz, 1994). Given these limitations, ***the first goal of the present study was to test the family stress hypothesis in a long-term, prospective design using both interview-based and behav-ioral observation measures of the quality offamily environment in the first 5 years of girls' lives.*** Following Belsky et al.'s (1991) causal model, we tested the hypothesis that contextual family stressors (i.e., single parenthood, low SES, and stressful life events) result in more negative and coercive (or less positive and harmonious) relationships among family members, which in turn provoke earlier pubertal timing in daughters.

In theorizing about relationships among family members, Bel-sky et al. (1991) did not distinguish between positive and negative dimensions of these relationships; that is, positive-harmonious relationships were treated as the opposite of negative-coercive relationships. Although family relationships have often been con-ceptualized in this unidimensional manner, recent research has suggested that family relationships have fairly independent posi-tive and negative dimensions (e.g., Ellis & Malamuth, in press; Hetherington & Clingempeel, 1992; Pettit, Bates, & Dodge, 1997) and that each of these dimensions often accounts for unique variance in child outcomes (e.g., Belsky, Hsieh, & Crnic, 1998; Hetherington & Clingempeel, 1992; Pettit & Bates, 1989). Ac-cordingly, variations in positive-harmonious family relationships may influence timing of pubertal maturation, independent of vari-ations in negative-coercive family relationships (and vice versa). To address this issue, ***the second goal of this study was to assess both positive and negative dimensions of family relationships in early childhood and to examine the effects of each of these dimen-sions on daughters'***

*pubertal timing in adolescence.* This was the first long-term prospective study of pubertal timing to include both positive and negative indices of the quality of family relationships.

*The Social Address of Father Absence*

Do girls raised in homes with their biological father absent experience sexual maturation earlier than girls raised with their biological father present? Most research on this topic suggests that girls reared in father-absent homes reach menarche several months earlier than their peers reared in father-present homes (Jones, Leeton, McLeod, & Wood, 1972; Moffitt et al., 1992; Surbey, 1990; Wiersen et al., 1993). Moreover, some of these studies have

Of course, not even this longitudinal design can truly answer the question because it cannot rule out gene effects.

found that the longer the period of father absence, the earlier the onset of daughters' menstruation (Moffitt et al., 1992; Surbey, 1990). Although there is reasonable evidence to support the father-absence hypothesis, there is almost no research on the relation between quality or extent of paternal caregiving and timing of daughters' pubertal development. The one study on this topic (Steinberg, 1988) did not find an accelerating effect of father-daughter distance on speed of daughters' pubertal maturation. The results of this study should be considered tentative, however, because it included fewer than 50 father-daughter dyads, examined father-daughter relationships only in homes where fathers and daughters were coresident (thus greatly restricting the range of father involvement), relied on questionnaire measures of the quality of father-daughter relationships, and began data collection after girls were already in early adolescence.

The overall absence of information about the relation between quality of father-daughter relationships measured dimensionally and daughters' pubertal timing, together with the dichotomous classification in past studies of fathers into present versus absent categories, is especially problematic because the theory (Belsky et al., 1991) conceptualizes parental influences as a continuum. The development of girls' reproductive strategies should be shaped not simply by whether the biological father is present or absent in the home but by the extent of his involvement in the daughter's life. An implication of Belsky et al.'s model is that it is not only within father-absent homes, but also within dysfunctional father-present homes, girls should develop in a manner that accelerates pubertal maturation. Thus, *the third goal of this study was to test the hypothesis that low-quality paternal investment in early childhood is associated with earlier pubertal timing in daughters*. The present study was the first to test this hypothesis in a long-term, prospective design using multiple measures (both interview based and home observation) of the quality of early father-daughter relationships. To provide a stringent test of this hypothesis, we examined whether quality of paternal investment predicts daughters' pubertal timing within father-present families.

Finally, we examined the issue of mother-effects versus father-effects on daughters' pubertal timing. Draper and Harpending's (1982, 1988) father-based theory of the development of female reproductive strategies and Belsky et al.'s (1991) family ecology-based theory of the development of female reproductive strategies offer somewhat different perspectives on this issue. Draper and Harpending's (1982, 1988) model implies that variations in fathers' investment in the family, more than mothers' investment in the family, will influence daughters' reproductive development. An implication of this type of father-based model is that father-effects will contribute uniquely to the prediction of daughters' pubertal timing, whereas mother-effects, if they occur, will be redundant with father effects. By contrast, Belsky et al. were silent on the issue of mothers vs. fathers. Belsky et al. emphasized parent-child relationships and other family processes more generally and did not distinguish between the effects of mothers and fathers on pubertal timing. To address this issue, *the fourth goal of this study was to assess the quality of both maternal caregiving and paternal caregiving received by daughters in early childhood and to compare the effects of these two sources of caregiving on daughters' pubertal timing*. The present study was the first to

compare mother-effects and father-effects on pubertal timing in a long-term, prospective design.

## Method

### Participants

The data presented in this report were collected as part of the ongoing Child Development Project, a multisite, longitudinal study of socialization factors in children's and adolescents' adjustment (see Dodge, Bates, & Pettit, 1990; Pettit et al., 1997). Participating families were initially recruited from three geographical areas (Nashville and Knoxville, Tennessee, and Bloomington, Indiana). At the time of kindergarten preregistration in the summers of 1987 and 1988, parents of matriculating children were solicited at random (in person at the child's school or by mail) to become involved in the study. About 70% agreed to participate. Data on contextual family stressors (i.e., single parenthood, SES, and family life stress) and quality of family relationships (i.e., mother-child, father-child, and mother-father relationships) were collected at this time (Year 1) while the daughters were in preschool (4 to 5 years old). A total of 585 families agreed to participate in the study. Of these 585 families, 281 of the children were girls. The analyses reported in this article were based on this female subsample, which was demographically diverse and representative of the geographic regions (81% Caucasian, 18% African American, 1% "other"; 28% lived with a single mother in Year 1). The Hollingshead (1975) Four-Factor Index of Social Status was computed from demographic information provided by the parents of the girls. The mean family score on the index was 38.85 ( $SD = 14.0$ ), indicating a predominantly lower middle to middle-class sample. The data on pubertal timing were collected in Year 8 of the study when the girls were in seventh grade (12 to 13 years old). Of the original 285 girls, 217 (76%) participated in the Year 8 interview. This subset is generally representative of the original sample (14% African American, mean SES = 39.88). Other analyses have shown that attrition has not biased the sample on any family socialization variables (Dodge, Pettit, Bates, & Valente, 1995).

### Year 1 Maternal Interview

Following recruitment, mothers were interviewed at home in the summer prior to daughters' entry into kindergarten. The 90-min audiorecorded interview included both open-ended and structured questions about each of two eras in the child's life (a period from age 12 months to 12 months ago and from the past 12 months to the present). The open-ended format was designed to be culturally

sensitive and to enable parents to explain their responses in their own words. Questions concerned the child's development and child-care history, family stressors, parental behavior, exposure to socializing factors, and current functioning. Interviewer training occurred over a 4-week time period and consisted of reading a procedure manual, observing other interviews, and conducting interviews with a supervisor present. Interviewers were trained to a reliability of 80% or higher (based on percentage of agreement across all items, using the supervisor's scores as the criterion) prior to conducting any real interviews. Reliability of actual scores was assessed through independent ratings of 41 randomly selected families made by a second coder who sat in with the interviewer. From the maternal interview, several measures of contextual family stressors and quality of family relationships were derived, as follows.

<sup>2</sup> Not all studies (see Campbell & Udry, 1995) have found an accelerating effect for years of father absence on menarcheal age. Further, Ellis and Garber (in press) found that years of stepfather presence, rather than years of biological father absence, best accounted for girls' pubertal timing.

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*Contextual Family Stressors*

Following Belsky et al. (1991), we assessed contextual family stressors in terms of the major social address variables that are associated with increased risk for low-quality parenting: having low SES, being raised in a single-parent household, and experiencing family stress. Ineffective parenting is more common in families experiencing each of these three types of contextual stressors (Bank, Forgatch, Patterson, & Fetrow, 1993; R. D. Conger et al., 1992; Hetherington & Martin, 1986).

*SES.* SES was computed on the basis of mothers' and fathers' occupations and years of education (Hollingshead, 1975). As recommended by Hollingshead, when fathers (or adult male partners) did not reside in the home, the mothers' scores were double weighted.

*Father absence and single-parent status.* The theoretical perspectives of Draper and Harpending (1982, 1988) and Belsky et al. (1991) are somewhat different in their approach to the question of father absence and single parenthood. Whereas Draper and Harpending (1982, 1988) focused on the presence versus absence of the biological father, Belsky et al. focused on the presence of one parent versus two parents. To accommodate both approaches, we created two different measures: biological father absence and single-parent status. The father-absence measure contrasted girls who were living with both biological parents (63% = father present) with girls who were living in single-mother households (28% = father absent) at Time 1. This measure classified as "missing" those girls who were living with a mother and stepfather (6%) or in various other arrangements (3%). The measure of single-parent status contrasted girls who were living with their biological mother plus either the biological father or stepfather (69% = two-parent status) with girls who were living in single mother households (28% = single-parent status) at Time 1.

*Family life stress.* Family life stress was assessed during the interview. Mothers were asked to recall each era and to answer these questions: "What changes or adjustments occurred during this time [prompting from a list including 10 major stressors such as death, divorce, and legal problems]?" "How did these changes affect your child?" Following these questions, the interviewer completed one rating of the extent of stressful, challenging events faced by the child and family. The ratings were made on a 5-point scale ranging from 1 (*minimum challenge*) to 5 (*severe frequent challenges*). The ratings from the two eras were averaged to yield a score for family-life stressors ( $M = 3.04$ ,  $SD = 0.94$ ; alpha across the two ratings = .64; correlation between independent raters = .79).

*Quality of Relationships Among Family Members*

*Harshness of discipline.* Mothers were asked to respond open-endedly to each of these questions for each era: "Who usually disciplined your child?" "How?" "Was your child ever physically punished?" "How often?" "If physical punishment had been used, how did adults usually spank your child?" "Do you remember any times when your child was disciplined severely enough to be hurt or to require medical attention?" Following these questions, the interviewer paused and privately completed two ratings on 5-point scales. The first rating assessed the degree of restrictive discipline received by the child; the scale ranged from 1 (*nonrestrictive, mostly prosocial guidance*) to 5 (*severe, strict, often physical*). The second scale assessed the interviewer's impression about whether the target child had been severely harmed, with points ranging from 1 (*definitely not*) to 5 (*authorities involved*). These four ratings (two ratings for each of two life eras) were averaged to derive the harshness-of-discipline score ( $M = 2.05$ ,  $SD = 0.67$ ; alpha across the four ratings = .81; interrater  $r = .78$ ).

*Severity of conflict in the parental dyad.* Mothers were asked to recall each era and to answer this question: "All families have conflicts, parents and kids. What kinds of family strife and violence was your child exposed to during this time" (e.g., shouting, physical fights, pushing-parent-parent or parent-child)? If necessary, interviewers probed for description of arguments and for any agency involvement. Following this question, the interviewer completed one rating of the severity of conflict within the

parental dyad (this included the biological mother and the male partner [either husband or boyfriend] living in the home) on a 5-point scale ranging from 1 (*rarely even shout*) to 5 (*physical fights, more than once*). The ratings from the two eras were averaged to yield a score for severity of conflict within the parental dyad ( $M = 2.19$ ,  $SD = 1.03$ ; alpha across the two ratings = .74; interrater  $r = .80$ ). Twenty-three mothers (8%) had missing data on this variable (i.e., they had no male partner in the home over either of the two time periods).

*Levels of supportiveness in the parental dyad.* Mothers were asked to recall each era and to answer these questions: "In what ways was your spouse helpful to you during this time?" "In what ways were you helpful to your spouse?" (The term *spouse* was used broadly to include either husband or male partner living in the home.) If necessary, interviewers probed for helpfulness and emotional support. Following each of these questions, the interviewer completed two ratings on 5-point scales. The first assessed helpfulness (0 = *no partner*; 1 = *none, minimal*; 2 = *when asked*; 3 = *did own chores*; 4 = *pitched in spontaneously*). The second assessed emotional supportiveness (0 = *no partner*; 1 = *none*; 2 = *minimal, tolerant*; 3 = *moderate*; 4 = *good, strong*). Because of the substantial number of absent partners, these ratings tended to have bimodal distributions. To create normal distributions, the ratings were recoded into the following 3-point scales: (0 = 0; 1 = 0; 2 = 1; 3 = 1; 4 = 2). Consistent with the theory of Belsky et al. (1991), this recoding placed fathers who were physically and psychologically absent into the same category. The eight ratings (four from each era) were averaged to derive a total score for level of supportiveness in the parental dyad ( $M = 1.41$ ,  $SD = 0.53$ ; coefficient alpha across the eight ratings = .88; interrater  $r = .86$ ). Twenty-three mothers (8%) had missing data on this variable. In general, these mothers were involved in ambiguous relationships with romantic partners (e.g., divorced but involved, dating but not committed) and chose not to answer questions about these relationships.

*Time spent by the father in childcare.* Mothers were asked to recall each era and to answer this question: "Who were your child's main caregivers during this time?" Following this question, the interviewer completed one rating of the amount of time the father spent taking care of child, on a 4-point scale ranging from 1 (*brief care*) to 4 (*major care*). This variable showed a clear bimodal distribution, with most fathers at either the highest or lowest end of the scale. Thus, scores of 1 and 2 were recoded as 0 (low paternal care) and scores of 3 and 4 were recoded as 1 (high paternal care). The ratings from the two eras were averaged to yield a score for level of paternal caregiving ( $M = .66$ ,  $SD = .36$ ; alpha across the two ratings = .77; interrater  $r = .72$ ).

*Year 1 Home Observation Measures*

Additional measures of quality of family relationships were obtained through home observation of a subset of 84 girls and their families. These observations focused on quality of maternal and paternal caregiving. Using a prekindergarten measure of aggression provided by the parents (Child Behavior Checklist; Achenbach & Edelbrock, 1983), we selected this subsample to have approximately equal numbers of high-, medium-, and low-aggression children. Data on mother-daughter interactions were obtained on all 84 families; data on father-daughter interactions were obtained on the 59 families in which the father resided in the home. Families were observed at home in the summer and early fall following the prekindergarten recruitment. Observers were doctoral students trained by a senior investigator by reading manuals, completing a 2-day workshop, conducting practice observations, and achieving acceptable levels of reliability. Using methods developed by Pettit and Bates (1989, 1990), two 2-hr observations were conducted for each family during the dinner hour or at other times when all family members were present. Family members were asked to go

about their usual activities while a home visitor sat and wrote extensive notes about family behavior. Separate global ratings were completed for mother-daughter and father-daughter interactions at the end of the 4 hr of

observation. To assess reliability, a second observer was present for one or both observations of 26 randomly selected families. From the global ratings, the following two parenting measures were derived.

*Mother-daughter and father-daughter affectionate positivity.* This measure consisted of four 5-point Likert-type items: "Most interactions between this parent and child are characterized by (1 = generally negative affect; 3 = neutral affect; 5 = generally positive affect)." "When interactions between this parent and child are positive, the degree of positiveness is (1 = mild; 3 = mid-range; 5 = highly warm and supportive)." "How does this parent respond when the child gets excited about something (1 = interferes; 3 = somewhat accepting; 5 = delighted with child)?" "How does this parent respond when the child has learned a new skill or accomplished something new (1 = appears indifferent; 3 = average levels of interest; 5 = responds with delight)?" Affectionate-positivity scores were recorded as the sum of the four Likert-type ratings (Cronbach's  $\alpha$  = .86 for mothers and .85 for fathers; primary and reliability observer  $r$  = .72 for mothers and .45 for fathers).

*Mother-daughter and father-daughter coercive control.* This measure consisted of three 5-point Likert-type items and two 5-point rankings: "When interactions between this parent and child are negative, the degree of negativity is (1 = low-level, mild; 3 = midrange, variable; 5 = extreme, explosive)." "How often does this parent have conflicts with the child (1 = rarely or never; 3 = occasionally, average amount; 5 = frequently, repeatedly)?" "When conflicts occur between this parent and child, how intense are they in terms of expressed negativity (1 = low intensity; 3 = moderately severe; 5 = highly negative, serious, damaging)?" "Does this parent react with physical punishment when the child misbehaves (1 = least typical response; 5 = most typical response)?" "Does this parent react with power assertion (e.g., take something away, time out, etc.) when the child misbehaves (1 = least typical response; 5 = most typical response)?" Coercive control scores were recorded as the sum of the five items (Cronbach's  $\alpha$  = .78 for mothers and .74 for fathers; primary and reliability observer  $r$  = .76 for mothers and .55 for fathers).

As shown above, the interrater correlations for the father-daughter measures were lower than for the mother-daughter measures. These lower correlations probably reflect the fact that father-daughter interactions occurred less frequently than mother-daughter interactions and were thus more difficult to code. Nonetheless, the interrater correlations for the father-daughter measures averaged .50 (both  $ps < .05$ ); these levels of interrater reliability were judged to be adequate.

#### *Year 8 Assessment of Pubertal Timing*

Adolescent daughters were interviewed (either at home or at school) in Year 8 of the study and answered questions concerning pubertal development at that time. Level of pubertal development was assessed by a questionnaire version (Carskadon & Acebo, 1993) of the Pubertal Development Scale (PDS; Petersen, Crockett, Richards, & Boxer, 1988). The questionnaire version was used so participants could complete the PDS in private (given the sensitive nature of the questions). In the instruction packet for scoring the PDS, Petersen et al. recommended using only menarcheal status, breast development, and body hair growth for the composite measure of pubertal development. Girls thus completed self-ratings on whether they had begun to menstruate (1 = no; 4 = yes) and on their levels of body hair growth and breast development (1 = not yet started; 2 = barely started; 3 = definitely started; 4 = seems complete). Each item included an "I don't know" response (which girls were instructed to mark if they did not understand a question or did not know the answer). Adolescent girls have been found to be accurate reporters of their menarcheal status (Brooks-Gunn, Warren, Rosso, & Gargiulo, 1987; Rierdan & Koff, 1985), and girls' self-ratings on the body hair growth and breast development questions have been found to correlate strongly with physician ratings (Brooks-Gunn et al., 1987). Overall pubertal develop-

ment scores were based on the average of the three items ( $M = 2.53$ ,  $SD = 0.86$ ; Cronbach's  $\alpha = .51$ ). Pubertal development scores were then converted into pubertal timing scores by partialing out girls' age. The pubertal timing scores were used in all data analyses. Higher scores indicated earlier pubertal timing (i.e., greater pubertal development in seventh grade, controlling for age).

Of the 217 girls who participated in the Year 8 follow-up, 198 filled out the PDS. (Some girls declined to complete the scale because of the invasiveness of the questions.) Of these 198 girls, 25 either failed to respond or marked "I don't know" to at least one of the three puberty items. These 25 girls were coded as missing, leaving a total of 173 girls with pubertal timing scores. The 173 girls with usable puberty scores did not differ from the 44 girls without usable puberty scores on age, race, or any of the measures of contextual family stressors or quality of family relationships.

### *Results*

#### *Interrelations Among Contextual Family Stressors and Quality of Family Relationships*

*Contextual family stressors.* Belsky et al. (1991) conceptualized families as inhabiting ecological contexts that vary along a continuum of stress. The theory specifies having low SES, being raised in a single-parent household, and experiencing stressful life events as major contextual stressors on the family. As one would expect, these forms of contextual stress correlated significantly ( $ps < .001$ ). Single-parent families tended to experience more family life stress,  $r(262) = .30$ , and to have lower SES,  $r(258)$

$-.44$ . Likewise, lower SES was associated with higher family life stress,  $r(273) = -.26$ .

*Quality of family relationships.* Quality of family relationships is central to the theorizing of Belsky et al. (1991), as it is conceptualized as the most adaptively significant feature of the individual's early childhood environment. According to the theory, the child perceives and experiences family relationships along a continuum varying from harsh, rejecting, and opportunistic to sensitive, supportive, and reciprocally rewarding. Consistent with this viewpoint, there were significant correlations among various measures of quality of family relationships (see Table 1). For example, families that were characterized by greater use of harsh discipline by parents tended to also be characterized by greater severity of conflict in the parental dyad, less supportiveness in the parental dyad, less time spent by the father in child care, and more frequent use of coercive control by parents. Importantly, the measures of parenting correlated across independent data sources. Thus, for example, the interview-based measure of harsh discipline was significantly correlated with the

behavioral observation measures of mother-daughter and father-daughter coercive control. Like-wise, the interview-based measure of supportiveness in the parental dyad was significantly correlated with the behavioral observation measures of mother-daughter and father-daughter affectionate-positivity.

*Relations Between Contextual Family Stressors and Quality of Family Relationships*

The first proposition of Belsky et al.'s (1991) model of individual differences in pubertal timing is that contextual family stressors foster more harsh and rejecting (or less warm and supportive)



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Table I  
*Intercorrelations Between Family Relationships Measures*

Measure discipline	1	2	3	4	5	6	7	8
2. Severity of conflict in parental dyad	.37*** (258)							
3. Supportiveness in parental dyad	-.36*** (258)	-.38*** (250)						
4. Time spent by father in child care	-.26*** (280)	-.23*** (258)	.60*** (258)					
5. Mother-daughter affectionate-positivity	-.22* (84)	-.11 (78)	.41*** (84)	.23* (84)				
6. Father-daughter affectionate-positivity	-.20 (59)	-.05 (58)	.36** (59)	.07 (59)	.60*** (59)			
7. Mother-daughter coercive control	.33** (84)	.15 (78)	-.33** (84)	-.24* (84)	-.51*** (84)	-.46*** (59)		
8. Father-daughter coercive control	.30* (58)	.02 (57)	.00 (58)	.09 (58)	-.11 (58)	-.25 (58)	.41*** (58)	

Note. Number of participants for each analysis is shown in parentheses. All significance tests are two-tailed. \* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

family relationships. This proposition was clearly supported by the data (see Table 2). Having lower SES, being raised in a single-parent household, and experiencing greater family life stress were each associated with harsher discipline, greater severity of conflict in the parental dyad, less supportiveness in the parental dyad, less time spent by the father in child care, and more mother-daughter coercive control.

Table 2  
*Correlations Between Contextual Family Stressors and Quality of Family Relationships*

Quality of family relationships	Contextual family stressor		
	SES	Single-parent status	Family life stress
1. Harshness of discipline (273)	-.46***	.25*** (262)	.30*** (280)
2. Severity of conflict in parental dyad (251)	-.25***	.35*** (242)	.35*** (258)
3. Supportiveness in parental dyad (251)	.38***	-.62*** (242)	-.29*** (258)
4. Time spent by father in child care (273)	.40***	-.66*** (262)	-.21*** (280)
5. Mother-daughter affectionate-positivity (84)	.49***	-.27* (81)	-.13 (84)
6. Father-daughter affectionate-positivity (59)	.04 (59)	-	(59)
7. Mother-daughter coercive control (84)	-.22* (84)	.33** (81)	.24* (84)
8. Father-daughter coercive control (58)	-.25 (58)	-	(58)

Note. Number of participants for each analysis is shown in parentheses. All significance tests are two-tailed. Dashes indicate that data were not obtained (because all father-daughter interactions occurred within two-parent homes). SES = socioeconomic status. \* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

*Relations Between Quality of Family Relationships and Daughters' Pubertal Timing*

*Validity of the puberty measure.* Two external criteria for validating a measure of pubertal development are age and race. In the 11-13 age range, girls who are older tend to be more pubertally developed than girls who are younger (Brooks-Gunn et al., 1987). In addition, African American girls tend to experience earlier pubertal timing than do Caucasian girls (National Heart, Lung, and Blood Institute Growth and Health Study Research Group, 1992). The age range at Year 8 for the girls in the present study was small (minimum age = 11.89 years, maximum age = 12.90 years;  $M = 12.39$ ,  $SD = .30$ ). Despite this small range, there was a trend for older girls to report more pubertal development,  $r(171) = .14$ ,  $p = .07$ .<sup>3</sup> When girls who were at least one standard deviation below the mean in age ( $n = 25$ ; mean level of pubertal development = 2.08) were compared with girls who were at least one standard deviation above the mean in age ( $n = 42$ ; mean level of pubertal development = 2.67), the difference in pubertal development was highly significant,  $t(65) = -3.08$ ,  $p = .003$ . In terms of race, the difference between Caucasians ( $n = 143$ ; mean level of pubertal development = 2.50,  $SD = 0.86$ ) and African Americans ( $n = 28$ ; mean level of pubertal development = 2.63,  $SD = 0.92$ ) was in the expected direction but was not statistically significant,  $t(169) = -0.68$ ,  $p = .50$ . Given the small number of African Americans in the present study, it was not surprising that the two groups were not significantly different. In total, the relations with age and race were largely consistent with expectations.

*Relations with pubertal timing.* The second proposition of Belsky et al.'s (1991) model is that quality of early family relationships influences the development of reproductive strategies. The specific prediction tested in this study is that girls whose early

<sup>3</sup>The original pubertal development measure, rather than the converted pubertal timing measure, was used in these validation analyses.

Table 4

*Correlations Between Positive and Negative Family Relationships Factors and Daughters' Pubertal Timing*

Family relationships factors	n	Pubertal timing
Factors derived from interview data		
Positive Family Relationships	157	-.31 ***
Negative Family Relationships	157	-.03
Factors derived from observational data		
Positive Family Relationships	40	-.45**
Negative Family Relationships	40	-.16

*Note.* All significance tests are two-tailed.

\*\* $p < .01$ . \*\*\* $p < .001$ .

to covary (if warranted by the data). The first analysis involved the four interviewer-based measures of family relationships: harshness of discipline, conflict in the parental dyad, supportiveness in the parental dyad, and time spent by the father in child care. The second analysis involved the four behavioral observation measures of family relationships: mother-daughter coercive control, father-daughter coercive control, mother-daughter affectionate-positivity, and father-daughter affectionate-positivity. ° On the basis of eig-envalue scree, two factors were extracted in each analysis. In both analyses, the first factor clearly tapped the positive dimension of family relationships (i.e., there were high loadings on positively valenced items, and low loadings on negatively valenced items), and the second factor clearly tapped the negative dimension of family relationships (i.e., there were high loadings on negatively valenced items, and low loadings on positively valenced items). These factors were moderately correlated in both data sources,  $r(250) = -.33$  between the interview-based factors, and  $r(58) = -.28$  between the behavioral observation factors. These data indicate that positive and negative family relationships were distinct but negatively correlated dimensions of family environment. We estimated these dimensions by weighting variables by their factor score regression coefficients in linear composites. This produced two overall scores for both Positive Family Relationships and Negative Family Relationships (one based on interview data, the other on behavioral observation data). Correlations were then calculated between both the Positive and Negative Family Relationships factors and daughters' pubertal timing (see Table 4).

As shown in Table 4, higher levels of Positive Family Relationships during the first 5 years of life predicted significantly later pubertal timing in daughters. These relations held whether the assessment of Positive Family Relationships was based on interview or behavioral observation data. In contrast, variations in levels of Negative Family Relationships were not associated with pubertal timing. Further, as one can see in Table 3, the positively valenced measures of family relationships (supportiveness in the parental dyad, time spent by the father in child care, mother-

<sup>4</sup> These two groups of measures were factor analyzed separately because combining the interviewer and observer measures would have reduced the sample through listwise deletion to 51 families. This reduced group would have included only father-present families (because the observer measures of father-daughter interactions were only collected in father-present homes), resulting in a factor analytic subsample that was qualitatively distinct from the full sample.

family relationships are more harsh, rejecting, and opportunistic (or less sensitive, supportive, and reciprocally rewarding) will experience earlier pubertal timing. This prediction received mixed, though reasonable, support (see Table 3). There were four interview-based measures of the quality of family relationships in the first 5 years of life. Of these, supportiveness in the parental dyad and time spent by the father in child care were statistically significant predictors of daughters' pubertal timing, whereas harshness of discipline and severity of conflict in the parental dyad were not. Consistent with the theory, greater supportiveness in the parental dyad and more time spent by the father in child care were each associated with later pubertal timing in daughters (see Table 3). There were also four behavioral observation measures of quality of early family relationships. Of these, mother-daughter affectionate-positivity and father-daughter affectionate-positivity were statistically significant predictors of pubertal timing, whereas mother-daughter coercive control and father-daughter coercive control were not. Again, consistent with the theory, more affectionate-positivity was associated with later pubertal timing (see Table 3).

All correlations between quality of family relationships and pubertal timing were recalculated after controlling for race. (Race was coded as a dummy variable and partialled out of the pubertal timing measure.) All four of the statistically significant correlations remained significant (and virtually unchanged) after controlling for race.

*Positive versus negative dimensions of the quality of family relationships.* Do positive and negative dimensions of family relationships, as assessed in early childhood, differ in their relation to daughters' pubertal timing in adolescence? To address this question, we first examined the structure of the family relationships data. Two principal-components analyses were performed on the measures of quality of family relationships and were followed by oblique rotation. Oblique rotation was used to allow the factors

Table 3

*Prekindergarten Measures of Contextual Family Stressors and Quality of Family Relationships Correlated With Seventh-Grade Pubertal Timing*

Prekindergarten measure	Pubertal <i>n</i> (pairwise)	timing
Contextual family stressors		
Socioeconomic status	170	.01
Father absence <sup>a</sup>	149	.17*
Single-parent status <sup>b</sup>	163	.17*
Family life stressors	173	.02
Quality of family relationships		
Harshness of discipline	173	.04
Severity of conflict in parental dyad	161	-.11
Supportiveness in parental dyad	162	-.25***
Time spent by father in child care	173	-.23**
Mother-daughter affectionate-positivity	59	-.29*
Father-daughter affectionate-positivity	41	-.43**
Mother-daughter coercive control	59	.23
Father-daughter coercive control	40	-.22

*Note.* All significance tests are two-tailed.

<sup>a</sup> Intact biological families versus single mothers. <sup>b</sup> Two-parent families versus single mothers.

\* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

daughter affectionate-positivity, and father-daughter affectionate-positivity) were all significantly related to pubertal timing, whereas the negatively valenced measures of family relationships (harshness of discipline, conflict in the parental dyad, mother-daughter coercive control, and father-daughter coercive control) were not. In total, these results indicated that the relation between quality of early family relationships and daughters' pubertal timing was driven by variation in the positive-harmonious dimension of family relationships rather than by variation in the negative-coercive dimension.

#### *Quality of Paternal Investment and Daughters' Pubertal Timing*

*Father absence.* Do girls raised in single-mother homes tend to experience earlier pubertal timing than girls raised in homes with both a mother and a father present? Whether single-mother families were compared with biologically intact families or with the larger set of all two-parent families, there was a small, significant relation between single-mother family and pubertal timing ( $r = .17$ ,  $p < .05$ ; see Table 3). As predicted by the theory, girls who were in single-mother homes at age 5 tended to experience earlier puberty. These correlations dropped slightly (though to nonsignificant levels) when controlling for race. Given this change, correlations were recalculated using the Caucasian sub-sample only. As in the full sample, Caucasian girls raised in single-mother homes tended to experience earlier pubertal timing than Caucasian girls raised in either intact biological families,  $r(123) = .23$ ,  $p < .05$ , or in the larger set of all two-parent families,  $r(134) = .23$ ,  $p < .01$ . There were not enough African Americans in the study **to run the analyses on that subsample also.**

**The dimensional quality of paternal investment within father-present homes.** An implication of Belsky et al.'s (1991) model is that father-effects on daughters' pubertal timing should involve more than just father-absent effects; that is, quality of paternal investment should predict daughters' pubertal timing even within father-present homes. We have already reported one set of results that are consistent with this hypothesis: Greater father-daughter affectionate-positivity during the prekindergarten observations was associated with later pubertal timing by daughters in seventh grade (see Table 3). All of the behavioral-observation data on father-daughter interactions were collected in father-present homes.

As an additional test of the effects of quality of paternal investment on daughters' pubertal timing (separate from the effects of father absence on pubertal timing), we selected cases in which girls were living in father-present homes during the first 5 years of life and then recomputed the correlations between daughters' pubertal timing and (a) time spent by the father in child care during those first 5 years and (b) supportiveness in the parental dyad during those first 5 years. These two predictor variables were used because they each indexed fathers' investment in the family (the former assessed father-daughter investment, and the latter assessed father-mother investment). Analyses were conducted using both the subsample of biologically intact families and the sub-sample of all two-parent families. Within the biologically intact families, more time spent by the father in child care,  $r(107) = -.24$ ,  $p < .05$ , continued to predict later pubertal timing by daughters in seventh grade, but greater supportiveness in the

parental dyad did not,  $r(107) = -.05$ ,  $p = ns$ , despite the substantial correlation between the two predictors (as can be seen in Table 1). Likewise, within the larger set of all two-parent families, more time spent by the father in child care,  $r(121) = -.18$ ,  $p < .05$ , significantly predicted later pubertal timing, but greater supportiveness in the parental dyad did not,  $r(121) = -.11$ ,  $p = ns$ . These data indicated that even when the range of paternal investment was restricted to the subset of families in which the father was present in the home, variations in the amount of time spent by the father in child care still significantly predicted variations in daughters' pubertal timing.

One possible interpretation of these data is that fathers who spend relatively little time in child care are more likely to become divorced. By this reasoning, the association between time spent by the father in child care and daughters' pubertal timing could be a latent father-absent effect deriving from the tendency of uninvolved fathers to subsequently become absent fathers. To examine this possibility, we selected cases in which girls had lived in father-present homes throughout their lives. Analyses were conducted using the subsample of girls who had lived in biologically intact families or in the same two-parent families (mother and either father or stepfather) throughout the duration of the study. Within the long-term biologically intact families,  $r(78) = -.30$ ,  $p < .01$ , as well as within the larger set of all long-term two-parent families,  $r(87) = -.29$ ,  $p < .01$ , more time spent by fathers in child care during the first 5 years of daughters' lives continued to predict later pubertal timing. Thus, even when the range of time spent by fathers in child care was restricted to the subset of families in which the fathers were permanently present in the home, variations in levels of caretaking by fathers during the early years of their daughters' lives still significantly predicted variations in daughters' pubertal timing in early adolescence.

#### *Comparison of Father-Effects and Mother-Effects on Daughters' Pubertal Timing*

Belsky et al. (1991) did not specifically distinguish between the influence of fathers and mothers on daughters' pubertal timing. However, a father-based model of pubertal timing, which is consistent with the theorizing of Draper and Harpending (1982, 1988), suggests that fathers' investment in the family will influence daughters' pubertal timing more than will mothers' investment in the family (and that if mother-effects emerge at all, they will be redundant with father-effects). We investigated this issue using the behavioral observation data because we did not have specific, distinct measures of both mothering and fathering in the interview data. We used the behavioral observation data to compare the effects of father-daughter interactions and mother-daughter interactions on

daughters' pubertal timing in intact families only. Analysis of intact families was necessary because it was not possible to conduct observations on the quality of paternal care-giving in father-absent homes.

Did the quality of paternal caregiving, more than the quality of maternal caregiving, predict daughters' pubertal timing? As reported earlier, more father-daughter affectionate-positivity and more mother-daughter affectionate-positivity each predicted later pubertal timing in daughters. To compare the predictive utility of the mother-based and father-based caregiving variables, we conducted two hierarchical regressions. In the first regression, daugh-

Discussion

In their now classic article on father absence and reproductive strategy, Draper and Harpending (1982) proposed that individuals have evolved to be sensitive to specific features of their early childhood environments, and that girls whose early family experiences are characterized by father absence and discordant male-female relationships will tend to perceive that male parental investment is not crucial to reproduction and will develop in a manner that accelerates onset of sexual activity and reproduction without careful choice of mates. Belsky et al. (1991) proposed several extensions to Draper and Harpending's original theory, including the addition of early pubertal timing as a component of the accelerated reproductive strategy, a shift in emphasis from the social address of father absence to more dynamic family processes, and the expansion from a more delimited father-based model to a more general family ecology model.

The central and most intriguing hypothesis proposed by Belsky et al. (1991)-that quality of early family relationships influences timing of pubertal development in adolescence-received reasonable support from this study. As predicted only by the theory and no other formulation of socialization processes, more time spent by the father in child care, greater supportiveness in the parental dyad, more father-daughter affectionate-positivity, and more mother-daughter affectionate-positivity each predicted later pubertal timing by daughters in seventh grade. These relations emerged (a) even though there was an 8-year time period between measurements (prekindergarten assessment of quality of family relationships vs. seventh-grade assessment of daughters' puberty), (b) even though the correlations were across independent data sources (interview reports and behavioral observations of family relationships vs. daughters' self-reported pubertal timing), and (c) whether quality of family relationships was assessed indirectly through mother-based interviewer reports or directly through home observations. The results of the present study generally support and extend past longitudinal research linking quality of family relationships to timing of pubertal maturation in girls (Ellis & Garber, in press; Graber et al., 1995; Moffitt et al., 1992; Steinberg, 1988; Wierson et al., 1993).

An important limitation of the present study was that it was not genetically informative. The evolutionary models of pubertal timing presented in this article rest on the concept of *conditional* reproductive strategies; that is, they emphasize environmentally triggered processes that shunt individuals toward given reproductive strategies. An alternative explanation, however, is that individual differences in pubertal timing and associated characteristics represent *alternative* reproductive strategies, which result from genetic differences. Consider this possibility: Girls who mature earlier tend to exhibit earlier onset of sexual activity (e.g., Binb ham, Miller, & Adams, 1990; Helm & Lidegaard, 1990; Phinney, Jensen, Olsen, & Cundick, 1990) and earlier age of first marriage and first birth (Manlove, 1997; Udry, 1979; Udry & Cliquet, 1982), which in turn are associated with increased probability of divorce and lower quality paternal investment. This covariation may occur because early pubertal timing results in precocious sexual and reproductive behavior (cf. Caspi & Moffitt, 1991) or because pubertal, sexual, and reproductive timing are genetically correlated traits. Because mothers who are early maturers tend to have daughters who are early maturers (Brooks-Gunn & Warren,

ter's pubertal timing was the dependent variable, the mother variables (mother-daughter affectionate-positivity and mother-daughter coercive control) were entered on the first step, and father-daughter affectionate-positivity was entered on the second step. As shown in Table 5, even after controlling for the mother variables, father-daughter affectionate-positivity remained a statistically significant predictor of daughter's pubertal timing. In the second regression, daughters' pubertal timing was the dependent variable, the father variables (father-daughter affectionate-positivity and father-daughter coercive control) were entered on the first step, and mother-daughter affectionate-positivity was entered on the second step. As shown in Table 5, after controlling for the effects of the father variables, the addition of mother-daughter affectionate-positivity did not increment the prediction of daughters' pubertal timing. In total, these data indicated that the effects of maternal care-giving on daughters' pubertal timing were redundant with the effects of paternal caregiving, whereas the effects of paternal caregiving contributed uniquely to the prediction of daughters' pubertal timing. In addition, as shown in the second hierarchical regression (see Table 5), more father-daughter affectionate-positivity and more father-daughter coercive control each significantly predicted later pubertal timing in daughters when entered simultaneously into the regression equation (Step 1;  $R^2 = .30$ ). These data suggested that more father-daughter interaction per se (whether positive or negative) may be associated with later pubertal maturation in daughters.

Table 5  
*Hierarchical Multiple Regressions: Comparison of Father-Effects and Mother-Effects on Daughters' Pubertal Timing (n = 40)*

Variable	R <sup>2</sup> change	F change	( $\beta$ )	/ Father-effects models
Step 1	.12	2.63	Mother-daughter	
affectionate-positivity			-.36	-2.21* Mother-daughter
coercive control			-.02	-0.13
Step 2	.09	3.98*	Father-daughter	
affectionate-positivity			-.36	-2.00*
Mother-effects model <sup>b</sup>				

Step 1	.30	8.17***		
Father-daughter affectionate-positivity			-.53	-3.70***
Father-daughter coercive control			-.36	-2.56*
Step 2	.01	0.49		
Mother-daughter affectionate-positivity			-.12	-0.70

*Note.* All significance tests are two-tailed.

<sup>a</sup> Effects of father-daughter affectionate-positivity, controlling for mother- daughter affectionate-positivity and mother-daughter coercive control. <sup>b</sup> Effects of mother-daughter affectionate-positivity, controlling for father-daughter affectionate-positivity and father-daughter coercive control.

\*p<.05. \*\*\*p < .001.



1988; Garn, 1980), the correlation between quality of paternal investment and timing of pubertal maturation in girls may be spurious; that is, it may simply be due to genetic transmission of pubertal timing and associated characteristics (Kim & Smith, 1998; Surbey, 1990).

On the basis of the present study, we cannot rule out this alternative explanation. It is worth noting, however, that previous studies that have controlled for either mothers' timing of pubertal maturation (Graber et al., 1995) or mothers' age at first childbirth (Ellis & Garber, in press) have still found significant associations between quality of family relationships and timing of daughters' puberty. Nevertheless, our study would have provided a better test of Belsky et al.'s (1991) conditional adaptation model if it had controlled for parents' pubertal timing. Unfortunately, relevant data on parental puberty were not collected.

Experimental research designs are needed to test for the causal influence of family relationships on pubertal timing. Forgatch (1991) and Kellam and Rebok (1992) have suggested that random-ized, longitudinally designed prevention trials can be used to test the causal status of parenting practices. In the case of pubertal timing, the prevention trials should begin prior to the onset of puberty (no later than the 2nd grade), should target dysfunctional families, and should focus on improving the positive quality of family relationships and paternal investment. Given a successful preventive intervention, the conditional adaptation model predicts that girls in the experimental condition will experience later pu-bertal timing than girls in the control condition. Such a preven-tive intervention study is currently underway (Ellis, Dodge, McFadyen-Ketchum, & The Conduct Problems Prevention Re-search Group, 1999). Without such experimental data, however, one must be cautious about attributing causal status to the observed relations between family environment and pubertal timing. With this limitation in mind, we now turn to implications of the present findings.

#### *The Social Address of Father Absence Versus the Dimensional Quality of Father-Daughter Relationships*

Whereas Draper and Harpending (1982, 1988) focused largely on the social address of father absence, Belsky et al. (1991) emphasized the role of more dynamic family processes, especially parent-child processes, in the development of female reproductive strategies. An implication of Belsky et al.'s model is that not only in father-absent homes, but also in dysfunctional father-present homes, girls should experience relatively early pubertal timing. The present study provides support for this approach. Consistent with past research (e.g., Ellis & Garber, in press; Moffitt et al., 1992; Surbey, 1990), girls who were raised in single-mother homes tended to experience earlier pubertal timing than girls who were raised in two-parent homes. Extending past research, among girls who were raised in two-parent homes, variations in the dimensional quality of father-daughter relationships were associ-ated with individual differences in pubertal timing. Two sets of results converged on this conclusion. First, greater father-daughter affectionate-positivity during the prekindergarten observations was associated with later pubertal timing in daughters. All of the father-daughter behavioral observations were made in father-present homes. Second, within father-present homes, more time spent by fathers in child care during the first 5 years of their

daughters' lives was associated with later pubertal timing. This relation held even in the subset of families in which the fathers had been present in the home throughout their daughters' entire child-hood. In sum, father-effects on daughters' pubertal timing clearly involved more than just father-absent effects. These data highlight the dimensional quality of father-daughter relationships as a possible influence on the timing of daughters' pubertal development.

#### *Positive Versus Negative Dimensions of Early Family Relationships*

Belsky et al. (1991) conceptualized negative-coercive family relationships and positive-harmonious family relationships as op-posite sides of the same coin. Whereas negative-coercive relation-ships were hypothesized to provoke earlier pubertal timing, positive-harmonious family relationships were hypothesized to promote later pubertal timing. The present data suggest that this theorizing was partially correct and partially incorrect. Factor analyses of both the interview and behavioral-observation data indicated that positive and negative family relationships were distinct but correlated dimensions of family environment. These dimensions differed in their relation to daughters' pubertal timing. As predicted by Belsky et al., higher levels of positive family relationships predicted significantly later pubertal timing by daughters. This finding replicated across both the interviewer ratings and behavioral observation ratings of positive family rela-tionships. In contrast, variations in levels of negative family rela-tionships were not associated with pubertal timing. This null finding was contrary to Belsky et al.'s theory. Taken together, *these data indicate that it was levels of **positive investment and support in family relationships, rather than levels of conflict and coercion in these relationships, that accounted for the relations with daughters' pubertal timing.***

A possible interpretation of the null relations found in our study between negative family relationships and daughters' pubertal timing is that the measures of negative family relationships were poorly indexed. This interpretation is unlikely, however, because the

measures of negative family relationships generally showed good internal consistency, reliability across raters, and reliability across independent data sources (i.e., behavioral observation vs. interviewer reports). Further, other analyses have shown that the present measures of negative family relationships are good long term predictors of child adjustment (Dodge, Pettit, & Bates, 1994; McFadyen-Ketchum, Bates, Dodge, & Pettit, 1996; Pettit, Bates, & Dodge, 1997).

Why did the predicted relation between negative-coercive family relationships in early childhood and subsequent pubertal timing fail to emerge? There are theoretical grounds for calling the prediction into question. Drawing on life history theory, Mac-Donald (1997) and Miller (1994) argued that in K-selected species (those characterized by high-investment, low-fertility reproductive strategies, such as those of humans) there should be a negative correlation between stress levels and speed of sexual maturation, rather than a positive correlation. Both of these theorists suggested that from an evolutionary perspective, it makes more sense in the face of physical or psychological stress for individuals to delay maturation and reproductive viability until predictably better

times.<sup>5</sup> Consistent with this perspective, Susman and colleagues (Susman, Dorn, & Chrousos, 1991; Susman et al., 1985) have hypothesized that stressful environments tend to delay pubertal onset by increasing levels of stress-related hormones from the adrenal axis. Increases in adrenal hormones have an inhibitor effect on sex steroid levels, resulting in delay of pubertal development.

*Belsky's Family Ecology Model Versus a More Specific Father-Effects Model*

Draper and Harpending's (1982, 1988) original theory of the development of reproductive strategies focused on fathers' role in the family. Belsky et al.'s (1991) theory of the development of reproductive strategies expanded this father-based model into a more general family ecology model. This family ecology model subsumed all of the predictions of a more limited father-effects model of pubertal timing (i.e., that father-daughter and father-mother relationships will influence puberty) and added to it new predictions (i.e., that mother-daughter relationships will influence pubertal timing and that proximal family relationships will mediate the link between contextual family stressors and puberty).

Although our study supports Belsky et al.'s (1991) focus on dynamic family processes and novel conceptualization of pubertal timing as an outcome of these processes, we found relatively little support for Belsky et al.'s shift to a general family ecology framework. A more limited father-effects model appears to provide a better fit to the data. As predicted by both the family ecology and father-effects models, the quality of fathers' early investment in the family emerged as a consistent predictor of daughters' pubertal timing. Beyond these father effects, however, the additional predictions of the family ecology model were not consistently supported. There are two sets of results that are relevant to this issue. First, of the contextual family stressors used in the present study (low SES, family life stressors, and single-parent status), only single-parent status (i.e., father absence) was associated with earlier pubertal timing in daughters. This association, of course, is consistent with a father-effects model. Second, father-effects emerged more strongly than mother effects. The direct comparison of mother- and father-effects on daughters' pubertal timing was conducted on the behavioral observation sub-sample. Consistent with the family ecology model, both mother-daughter affectionate-positivity and father-daughter affectionate-positivity were associated with later pubertal timing in daughters. However, only father-daughter affectionate-positivity made a unique contribution to the prediction of daughters' puberty (after controlling for the quality of mother-daughter relationships). Further, beyond mother-daughter affectionate-positivity, all of the other predictor variables in the study that were significantly correlated with pubertal timing were markers of fathers' investment in the family (i.e., father absence, time spent by the father in child care, supportiveness in the parental dyad, and father-daughter affectionate-positivity).

In total, *the present data suggest that the quality of fathers' investment in the family is the most important feature of the proximal family environment relative to daughters' pubertal timing.* This conclusion is consistent with Surbey's (1990) finding that girls who grew up in father-absent homes, but not in mother-absent homes, experienced earlier menarche than girls who grew up with

both parents present. The primacy of father effects is notable, given that quality of mothering is generally more closely associated with child outcomes than is quality of fathering (Rothbaum & Weisz, 1994).

Although the zero-order correlations presented in Table 3 highlight the relation between positive paternal investment and daughters' pubertal timing, the second multiple regression presented in Table 5 suggests that paternal investment per se (whether positive or negative) may account for the relations with daughters' pubertal timing. When father-daughter affectionate-positivity and father-daughter coercive control were entered simultaneously on Step 1 of the regression, each accounted for unique variance in daughters' pubertal timing. Most striking, not only did more father-daughter affectionate-positivity predict later pubertal timing in daughters (after controlling for father-daughter coercive control), but also more father-daughter coercive control predicted later pubertal timing in daughters (after controlling for father-daughter affectionate-positivity). Because the measures of both affectionate-positivity and coercive control were sensitive to frequency of father-daughter interactions, it may be that more father-daughter interaction or involvement per se delays pubertal maturation in daughters.

*Why Fathers?*

In all regions of the world and across all social and economic systems, mothers invest more time and energy in the direct care of children than do fathers (reviewed in Geary, 1998). Although mothers (and sometimes their female kin) form the primary foundation of parental care in all societies, the contribution of fathers to the family is—and presumably always has been—widely variable (see Draper & Harpending, 1982, 1988; Geary, 1998). Within and across cultures, some men tend to form transient relationships with female partners and contribute relatively little to the care and provisioning of children, whereas other men tend to form long-term relationships with female partners and make considerable investment in children. Over the course of human evolution, this variability in male reproductive strategies must have afforded young girls with important cues to the reproductive opportunities and constraints they were likely to encounter later in life. Drawing on this logic, Draper and Harpending (1982, 1988) posited that girls have evolved to experience early socialization with their "antennae" tuned to the father's role in the family (both in terms of father-mother and father-daughter relationships) and that different paternal roles bias girls toward the acquisition of different reproductive strategies. The present data showing an association between early paternal investment and subsequent timing of puberty in daughters is consistent with this theorizing.

*Possible Mechanisms*

Although the present data highlight the role of positive family relationships and paternal investment in the regulation of daughters' reproductive development, they do not directly shed light on

<sup>s</sup> There is one form of stress-temporarily increased adult mortality rates-that has been shown to lead to earlier ages of sexual maturation in a variety of animal species, including mammals (Roff, 1992; Steams, 1992). Under such risky circumstances, accelerated reproduction is strongly favored over delayed reproduction.

the psychological mechanisms and processes that mediate the relation between early family relationships and adolescent pubertal timing. As discussed earlier, one possibility is that the relation is spurious—the result of genetic transmission of pubertal timing and associated reproductive behaviors. Another possibility, consistent with Belsky et al. (1991), is that stress is the causal mechanism but that it is the particular kind of stress associated with either low levels of positive family relationships, a lack of paternal investment, or both that provokes earlier puberty. Future research could address this issue by collecting both behavioral data on family relationships and physiological data on daughters' stress responses (see Flinn & England, 1995, for the use of this methodology).

A third possibility is that exposure to unrelated adult males is the causal mechanism (Ellis & Garber, in press; Surbey, 1990). Research on a variety of mammalian species (e.g., mice, cows, pigs, tamarins) indicates that exposure to pheromones produced by unrelated adult male conspecifics accelerates female pubertal development (Izard, 1990; Sanders & Reinisch, 1990; Ziegler, Snowdon, & Uno, 1990). Consistent with findings from this animal research, Ellis and Garber's (in press) findings indicated that years of exposure to unrelated father figures (stepfathers and mothers' boyfriends), rather than years of biological father absence, best accounted for earlier pubertal timing in girls. It may be that girls from paternally deprived homes are more likely to become exposed to the pheromones of stepfathers and other unrelated adult males, which in turn accelerates pubertal development. Unfortunately, the present study did not include enough information on daughters' exposure to unrelated males to test for its effects.

Another possible mechanism is inhibition of pubertal development through pheromonal exposure to the biological father (Hoogland, 1982; Surbey, 1990). There is some evidence in the animal research literature that the presence of closely related adult males inhibits reproductive maturation in females (and may function as an incest avoidance mechanism). In prairie dogs, for example, first ovulation is delayed in females who remain in contact with their biological fathers (Hoogland, 1982). In the present study, among the subset of girls who had lived with their biological fathers throughout their lives (and thus were not exposed to stepfathers), more time spent by the father in child care during the girls' first 5 years of life was associated with later pubertal timing in seventh grade. Further, as discussed above, more father-daughter interaction or involvement per se was associated with later pubertal maturation. These data are consistent with the hypothesis that increased pheromonal exposure to biological fathers inhibits sexual maturation. However, it is also likely that girls who have high-investing fathers in the home tend to begin sex and dating at a later age (e.g., Flinn, 1988; Hetherington, 1972) and thus have less pheromonal exposure to male dating partners in early adolescence.

In closing, we would like to comment on the possible clinical implications of this work. As noted earlier, both father absence and early pubertal timing have been implicated as risk factors for female sexual promiscuity and teenage pregnancy. A father-based model of female reproductive development suggests that early pubertal maturation, risky sexual behavior, and early age of first birth are all components of an integrated reproductive strategy that derives, in part, from low paternal investment. The present data highlight the importance of early paternal involvement in the development of "healthy" reproductive functioning in daughters.

At the same time, one should not interpret these data as suggesting that any adult male involvement is beneficial, as other research suggests that the presence of unrelated father figures may actually accelerate pubertal maturation in girls (Ellis & Garber, in press).

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## **Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?**

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The impact of father absence on early sexual activity and teenage pregnancy was investigated in longitudinal studies in the United States ( $N = 242$ ) and New Zealand ( $N = 520$ ), in which community samples of girls were followed prospectively from early in life (5 years) to approximately age 18. Greater exposure to father absence was strongly associated with elevated risk for early sexual activity and adolescent pregnancy. This elevated risk was either not explained (in the U.S. study) or only partly explained (in the New Zealand study) by familial, ecological, and personal disadvantages associated with father absence. After controlling for covariates, there was stronger and more consistent evidence of effects of father absence on early sexual activity and teenage pregnancy than on other behavioral or mental health problems or academic achievement. Effects of father absence are discussed in terms of life-course adversity, evolutionary psychology, social learning, and behavior genetic models.

In modern Western societies, adolescent girls face a biosocial dilemma. On the one hand, the biological capacity to reproduce ordinarily develops in early adolescence; on the other hand, girls who realize this capacity before adulthood often experience a variety of negative life outcomes. Specifically, adolescent childbearing is associated with lower educational and occupational attainment, more mental and physical health problems, inadequate social support networks for parenting, and increased risk of abuse and neglect for children born to teen mothers (e.g., Furstenberg, Brooks-Gunn, & Chase-Lansdale, 1989; Konner & Shostak, 1986; Woodward & Fergusson, 1999). Despite these consequences, the United States and New Zealand have the first and second highest rates of teenage pregnancy among Western indus-

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trialized countries. Approximately 10% of girls in the United States and 7% of girls in New Zealand between the ages of 15 and 19 years become pregnant each year, with around half of these pregnancies culminating in a live birth (Cheesbrough, Ingham, & Massey, 1999; Dickson, Sporle, Rimene, & Paul, 2000). Given these costs to adolescents and their children, it is critical to identify life experiences and pathways that place girls at increased risk for early sexual activity and adolescent pregnancy.

Many studies have identified the absence of the biological father from the home as a major risk factor for both early sexual activity (e.g., Day, 1992; Kiernan & Hobcraft, 1997; Newcomer & Udry, 1987) and teenage pregnancy (e.g., Geronimus & Korenman, 1992; Hogan & Kitagawa, 1985; McLanahan, 1999). This finding is consistent with life-course adversity models of early sexual activity and teenage pregnancy, which posit that a life history of familial and ecological stress provokes earlier onset of sexual activity and reproduction (e.g., Belsky, Steinberg, & Draper, 1991; Coley & Chase-Lansdale, 1998; Fergusson & Woodward, 2000a; Robbins, Kaplan, & Martin, 1985; Scaramella, Conger, Simons, & Whitbeck, 1998). Life-course adversity models, however, do not attribute any special causal significance to father absence. Instead, these models conceptualize father absence as just one of many factors that can undermine the quality of family environments. According to life-course adversity models, it is not father absence per se but various

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other stressors associated with father absence (e.g., divorce, poverty, conflictual family relationships, erosion of parental monitoring and control) that foster early sexual activity and pregnancy in daughters (see Belsky et al., 1991, p. 658; Chisholm, 1999, p. 162; McLanahan, 1999, p. 119; Robbins et al., 1985, p. 568; Silverstein & Auerbach, 1999, p. 403).

In addition to the effects of life-course adversity, underlying personality traits may account for the relation between father absence and early sexual outcomes in daughters. Specifically, certain personality traits that predispose girls toward early sexual activity and teenage pregnancy may covary with father absence. Differences between children in externalizing behavior problems—those behaviors considered to be aggressive, disruptive, or oppositional—derive in part from individual differences in temperamental characteristics such as negative emotionality and resistance to control (Bates, Pettit, Dodge, & Ridge, 1998; Rothbart & Bates, 1998). Children who display externalizing behavioral problems early in life are at elevated risk for a variety of negative psychosocial outcomes in adolescence, including early sexual activity and teenage pregnancy (e.g., Bardone, Moffitt, Caspi, Dickson, & Silva, 1996; Quinton, Pickles, Maughan, & Rutter, 1993; Woodward & Fergusson, 1999). Moreover, individuals who have a history of externalizing disorders are not only at increased risk of becoming single parents or absent parents (e.g., Emery, Waldron, Kitzmann, & Aaron, 1999; Sampson & Laub, 1990) but also may transmit a genetic disposition toward externalizing behavioral problems and associated personality characteristics to their children (Rhee & Waldman, 2002; personality characteristics associated with both sexual risk taking and other forms of delinquent behavior in adolescence are discussed in Kotchick, Shaffer, Forehand, & Miller, 2001). Thus, girls from father-absent homes may be at elevated risk for early sexual activity and teenage pregnancy because of higher genetic loading for externalizing behavior problems.

In contrast to the life-course adversity and personality trait models, evolutionary models suggest that early onset of father absence places daughters at special risk for early sexual activity and adolescent pregnancy. Specifically, evolutionary psychologists have hypothesized that the developmental pathways underlying variation in daughters' reproductive strategies are especially sensitive to the father's role in the family and the mothers' sexual attitudes and behavior in early childhood (Draper & Harpending, 1982, 1988; see also Ellis, McFadyen-Ketchum, Dodge, Pettit, & Bates, 1999). Consistent

with Hetherington's (1972) work on the effects of early father absence on personality development in adolescent daughters, the evolutionary model suggests that girls detect and internally encode information about parental reproductive strategies during approximately the first 5 years of life as a basis for calibrating the development of motivational systems, which make certain types of sexual behavior more or less likely in adolescence. The model thus posits a direct effect of quality of early paternal investment (e.g., father presence vs. absence, quality of paternal care giving, father–mother relationships) on early onset of sexual and reproductive behavior.

In light of these theoretical considerations, the current research examined the following set of questions:

*Goals of the Current Research*

1. Is earlier onset of biological father absence associated with increasing risk of early sexual activity and teenage pregnancy in daughters?

Despite voluminous research on father absence, very few studies have examined the relation between timing of onset of father absence and daughters' sexual outcomes. In a small observational study, Hetherington (1972) found that adolescent girls from early father-absent homes (divorced before age 5) tended to initiate more contact with, and seek more attention from, adult males than did girls from late father-absent homes (divorced after age 5). In a large retrospective survey, however, McLanahan (1999) did not find statistically significant relations between timing of onset of father absence and rates of teenage childbearing in daughters. The current research is the first to measure prospectively the timing of onset of father absence throughout early and middle childhood and then test for its effects on early sexual activity and pregnancy in adolescence.

2. Does earlier onset of biological father absence uniquely increase risk for early sexual activity and adolescent pregnancy in daughters, independent of both early externalizing behavior problems and familial and ecological stressors that covary with father absence? That is, does more exposure to father absence place daughters at special risk for early sexual outcomes? Regardless of whether girls are rich or poor, Black or White, cooperative or defiant in kindergarten, born to teenage or adult mothers, grow up in violent or

safe neighborhoods, experience many or few stressful life events, have warm-supportive or harsh-rejecting parents, are exposed to functional or dysfunctional marriages, are closely or loosely monitored by parents, and so forth?

A number of studies have found that father absence uniquely predicts early sexual activity

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(Day, 1992; Devine, Long, & Forehand, 1993; Miller et al., 1997; Upchurch, Aneshensel, Sucoff, & Levy-Storms, 1999) and adolescent pregnancy or child-bearing (Hogan & Kitigawa, 1985; Robbins et al., 1985), after controlling for such confounding variables as race, socioeconomic status (SES), neighborhood danger, and parental monitoring and control. All of these studies, however, began when daughters were already in early to late adolescence and thus were unable to assess familial and ecological stressors before daughters' risk for involvement in sexual activity. The current research is the first to assess prospectively life-course adversity through-out early and middle childhood, and control for its effects when testing for the relation between timing of father absence and rates of early sexual activity and adolescent pregnancy.

3. Does earlier onset of biological father absence discriminantly increase risk for early onset of sexual activity and teenage pregnancy but not for adolescent behavioral and mental health problems more generally? Independent of early externalizing problems and life-course adversity? In other words, is greater exposure to father absence a general risk factor for the development of psychopathology, or is it specific to sexual development?

To our knowledge, only Newcomer and Udry (1987) have explicitly addressed this question. In a short-term longitudinal study of White adolescents, Newcomer and Udry found that the effect of father absence on a composite measure of age-graded minor delinquencies (e.g., smoking, drinking alcohol, cheating on a test) was statistically significant and about equal in magnitude to the effect of father absence on onset of first sexual intercourse in girls. Newcomer and Udry, however, did not control for potentially confounding third variables (e.g., race, SES, mother's age at first birth) that could account for the correlation between father absence and delinquency. The current research examined the unique effects of timing of father absence on a variety of psychosocial and educational outcomes, after controlling for the effects of child conduct problems and familial and ecological stressors during childhood.

This set of questions was investigated in two independent longitudinal studies in the United States and New Zealand. In the U.S. study, a community sample of girls was followed prospectively from the summer before kindergarten through to the 12th grade. In the New Zealand study, a birth cohort of girls was followed prospectively from infancy through to age 18.

### **Method: United States** *Participants and Overview*

The United States data were collected as part of the ongoing Child Development Project, a multisite longitudinal study of socialization factors in children's and adolescents' adjustment (see Dodge, Bates, & Pettit, 1990; Pettit, Bates, & Dodge, 1997). Participating families were initially recruited from three geographical areas (Nashville and Knoxville, Tennessee, and Bloomington, Indiana). At the time of kindergarten preregistration in the summers of 1987 (Cohort 1) and 1988 (Cohort 2), parents of matriculating children were solicited at random (in person at the child's school or by mail) to become involved in the study. About 75% agreed. A total of 585 families agreed to participate in the study. Of these 585 families, 281 of the children were girls. The analyses reported in this article are based on this female subsample, which was demographically diverse and representative of the geographic regions (81% White, 17% African American, 2% other; 28% lived with a single mother at the beginning of the study). The Hollingshead (1975) Four-Factor Index of Social Status was computed from demographic information provided by the parents of the girls. The mean family score on the index at the beginning of the study was 38.85 ( $SD = 14.0$ ), indicating a predominantly middle-class sample. Data on girls' early externalizing behavioral problems and on familial and ecological stressors were collected in Years 1 through 9 of the study (ages 5–13). Data on adolescent sexual activity, pregnancy, internalizing and externalizing behavioral problems, academic performance, and violence were collected in Years 10 through 13 of the study (ages 14–17). At the completion of the study in Year 13, the average age of the girls was 17.3 years ( $SD = .34$ ). Of the original 281 girls, 242 (86%) participated in the Years 10 through 13 data collections. This subset was generally representative of the original sample (16% African American; 25% from single-mother homes; mean SES 5 39.45). Other analyses have shown that attrition has not significantly biased the sample on either initial child adjustment or family socialization variables (see Pettit et al., 1997; Pettit, Bates, Dodge, & Meece, 1999). Nonetheless, there was a slight but statistically nonsignificant trend for the 242

girls in the current analyses to underrepresent girls from socially disadvantaged backgrounds (low SES, Afri-can American, single-mother homes).  
Following recruitment, mothers were interviewed at home in the summer before daughters' entry into

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kindergarten (see Dodge, Pettit, & Bates, 1994), when most children were 5 years of age. The 90-min audiorecorded interview included both open-ended and structured questions about each of two eras in the child's life (a period from 12 months of age up to 12 months ago, and the past 12 months). Questions concerned the child's development and child-care history, family stressors, parental behavior, exposure to socializing factors, and current functioning. Reliability was assessed through independent ratings of 41 randomly selected families made by a second coder who sat in with the interviewer. Additional home interviews with the mothers were conducted in Years 7 and 9 of the study (when daughters were approximately ages 11 and 13). Questions concerned family changes and adjustment, child's involvement in after-school care settings, parenting practices, and neighborhood characteristics over the past year.

In addition, mothers annually completed child behavior-problem questionnaires and provided family demographic data. Behavior-problem questionnaires were also completed by daughters in Years 11 through 13 of the study (approximate ages 15–17). Daughters answered questions about sexual behavior and pregnancy at this time. Also at this time, research staff requested permission to view the participants' academic records.

#### *Timing of Onset of Father Absence*

To determine timing of onset of father absence, household composition data were collected during Years 1 through 9 of the study (ages 5–13). Because Hetherington (1972) and Draper and Harpending (1982) suggest that the first 5 years of life constitute a sensitive period for the effects of father absence on daughters' sexual development, *early onset of father absence* was defined in this study as absence of the "birth father" (either the biological father or an adoptive father present from birth) from the home at or before age 5. This cutoff was also chosen to allow comparison with past studies, which have commonly defined early father absence as occurring in the first 5 years (e.g., Bereczkei & Csanaky, 1996; Blain & Barkow, 1988; Hetherington, 1972). Girls were thus classified as early father absent if they were either born into single-mother families or born into intact two-parent families but subsequently experienced birth father absence at or before age 5. *Late onset of father absence* was defined as birth father presence in the home through age 5 but subsequent absence of the birth father from the home beginning sometime during ages 6 through 13. We chose age 13

as the cutoff for late father absence to complete measurement of father absence before the onset of first pregnancy in daughters. *Father presence* was defined as birth father presence in the home through age 13. Classification of girls into the father-present or father-absent groups was based solely on birth father status and did not take stepfathers into account (33% 5 early father absent, 12% 5 late father absent, 55% 5 father present).

#### *Adolescent Sexual Outcomes*

*Early sexual activity.* In Year 12 (age 16), girls were asked whether they had ever had sexual intercourse. Girls who responded "no" were coded as 0 for early sexual activity (60%); girls who responded "yes" were coded as 1 for early sexual activity (40%). The age 16 cutoff has been commonly used in past studies to demarcate early onset of sexual activity (e.g., Fergusson & Woodward, 2000b; Kiernan & Hobcraft, 1997; Paul, Fitzjohn, Herbison, & Dickson, 2000).

*Adolescent pregnancy.* In Years 10 through 13 (ages 14–17), girls were asked annually whether they had become pregnant in the last year. Girls who reported no pregnancies over this period were coded as 0 for adolescent pregnancy (85%); girls who reported at least one pregnancy over this period were coded as 1 for adolescent pregnancy (15%).

#### *Covariate Factors*

To assess the extent to which associations between timing of father absence and adolescent sexual outcomes could be explained by the effects of early externalizing problems and familial and ecological

stressors, the following 10 variables were included as covariates in the analysis. The measures of familial and ecological stress were chosen as covariates on the basis of past research indicating (a) covariation with father absence and (b) prediction to early sexual activity and adolescent pregnancy (see reviews by Kotchick et al., 2001; Miller, Benson, & Galbraith, 2001). The covariates were measured repeatedly and prospectively from the beginning of each study through age 13.

*Externalizing behavior problems (early childhood).*

During Years 1 and 2 of the study (ages 5–6), mothers completed the Child Behavior Checklist (CBCL; Achenbach, 1991). The 33-item externalizing problems score, which has been reported to have excellent psychometric properties (Achenbach, 1991), was used to index daughters' early externalizing problems. A composite externalizing behavioral



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problems score, was computed by averaging over Years 1 and 2 ( $A = .81$ ,  $M = 10.63$ ,  $SD = 6.47$ ).

*Mother's age at first birth.* Mothers reported how old they were when they first gave birth to a child ( $M = 23.23$ ,  $SD = 4.82$ ).

*Race.* Race was coded as a dummy variable: 0 = Caucasian (83%), 1 = non-Caucasian (17%). Of the 42 non-Caucasian participants, 38 were African American.

*SES.* SES was computed on the basis of mothers' and fathers' occupation and years of education (Hollingshead, 1975; full description in Dodge et al., 1994). Because the rank-ordering of SES between families was highly stable over time, a composite childhood SES score was computed by averaging SES scores from Year 1 (age 5) and Year 9 (age 13;  $a = .84$ ,  $M = 38.11$ ,  $SD = 12.78$ ).

*Family life stress (early childhood).* Family life stress was assessed during the Year 1 interview on the basis of questions concerning changes and adjustments in the home and their perceived impact on the child during each era (see Dodge et al., 1994). Interviewers completed ratings of the extent of stressful, challenging events faced by the child and family ( $1 = \text{minimum challenge}$ ,  $5 = \text{severe frequent challenges}$ ). The rating from the two eras were averaged to yield a score for family life stressors ( $a = .64$ , proportion agreement between independent raters of the same protocol  $= .79$ ,  $M = 3.04$ ,  $SD = .94$ ).

*Dyadic adjustment (early childhood).* During the Year 1 interview, mothers were asked to recall each era and answer questions concerning the kinds of family strife and violence the child was exposed to (see Ellis et al., 1999). Interviewers then completed ratings of the severity of conflict within the parental dyad ( $1 = \text{rarely even shout}$ ;  $5 = \text{physical fights, more than once}$ ). The rating from the two eras were averaged to yield an overall score ( $a = .74$ , inter-rater agreement  $= .80$ ,  $M = 2.19$ ,  $SD = 1.03$ ). Mothers were also asked questions concerning levels of help and emotional support from their partners during each era (see Ellis et al., 1999). Interviewers then completed ratings of level of supportiveness in the parental dyad, and the ratings from the two eras were averaged to yield an overall score ( $a = .88$ , inter-rater agreement  $= .86$ ,  $M = 2.37$ ,  $SD = .57$ ). A composite measure of dyadic adjustment was computed by standardizing and then averaging the measures of "severity of conflict within the parental dyad" (reverse-scored) and "supportiveness in the parental dyad" ( $a$  across the two measures  $= .55$ ).

*Harshness of discipline (early childhood).* During the Year 1 interview, mothers were asked about their use

of discipline practices and whether the child had ever been harmed by an adult during each era (see Dodge et al., 1994). Interviewers then completed ratings of the degree of restrictive discipline received by the child ( $1 = \text{nonrestrictive, mostly prosocial guidance}$ ;  $5 = \text{severe, strict, often physical}$ ) and whether the target child had been severely harmed ( $1 = \text{definitely not}$ ,  $5 = \text{authorities involved}$ ). These four ratings (two ratings for each of two life eras) were averaged to derive the early childhood harshness of discipline score ( $a = .81$ , inter-rater agreement  $= .78$ ,  $M = 2.05$ ,  $SD = .67$ ).

*Harshness of discipline (preadolescence).* Harshness of discipline was also assessed during the Years 7 and 9 interviews. Using a 4-point scale ( $1 = \text{never}$ ,  $4 = \text{frequently}$ ), mothers rated how often they used each of six harsh disciplinary tactics (e.g., scold, slap or hit with hand, use belt/paddle). A composite harshness of discipline measure was computed by averaging the Year 7 ( $a = .67$ ) and Year 9 ( $a = .67$ ) measures ( $a$  across the two measures  $= .77$ ,  $M = 2.06$ ,  $SD = .42$ ).

*Parental monitoring (preadolescence).* Parental monitoring was assessed during the Years 7 and 9 home interviews with the mothers. Although the two measures had slightly different content, both employed 5-point frequency scales and focused on parents' awareness of their children's activities and companions. A composite measure of parental monitoring was computed by standardizing and then averaging the Year 7 ( $a = .73$ ,  $M = 4.65$ ,  $SD = .34$ ; see Pettit et al., 1999) and Year 9 ( $a = .67$ ,  $M = 4.32$ ,  $SD = .45$ ; see Pettit, Laird, Dodge, Bates, & Criss, 2001) measures ( $a$  across the two measures  $= .66$ ).

*Neighborhood danger (preadolescence).* Neighborhood danger was assessed during the Years 7 and 9 home interviews with the mother. During the Year 7 interview, mothers responded to a set of six items (adapted from the Self-Care Checklist; see Posner & Vandell, 1994) describing their general appraisal of neighborhood and family safety. Items were rated on a 6-point scale (*very safe* to *very unsafe*) and averaged to form an overall neighborhood safety score ( $a = .90$ ,  $M = 2.01$ ,  $SD = .86$ ). In addition, immediately following the Year 7 and Year 9 interviews, the interviewer completed a 4-point rating of overall neighborhood safety (*very safe* to *very unsafe*;  $M$ s = 1.82 and 1.71,  $SD$ s = .85 and .77, respectively). A

composite measure of neighborhood danger was computed by standardizing and then averaging the mother-report and two interviewer-report measures (A  
' across the  
three measures =.78).

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*Measures of Psychosocial Adjustment and Educational Achievement (Adolescence)*

To assess the extent to which timing of father absence discriminantly predicted early sexual activity and adolescent pregnancy (but not other behavioral and mental health problems), the following educational and psychosocial outcome variables were investigated. These outcomes were measured concurrently with assessment of timing of sexual activity and adolescent pregnancy from ages 14 to 18.

*High school grade point average (GPA).* Data on high school GPA were drawn from archival school records (Grades 9–11). Staff members examined each child's file and noted the grades earned in math, language, science, and social studies. Conventional grade conversions were used (i.e., A = 4, B = 3, C = 2, D = 1, E = 0). A composite GPA was calculated for each child by averaging the grades received across the four subjects across the three years ( $a = .89$ ,  $M = 2.50$ ,  $SD = .96$ ).

*Violent acts (adolescence).* Data on violent acts were collected in Years 12 and 13 (approximate ages 16–17). Girls in each year reported how often they had performed each of seven violent acts in the last 12 months (e.g., “How many times have you been physically cruel to someone else [causing harm]?” “How many times have you started a fight with someone else, where you hurt that person?” “How many times have you used a weapon that can cause serious physical harm to others [like a bat, brick, broken bottle, knife, or gun]?”). Girls who reported no violent acts in either year were coded as 0 for violent acts (76%); girls who reported at least one violent act in either year were coded as 1 for violent acts (24%).

*Externalizing behavior problems (adolescence).* Self-report and mother reports of externalizing behavior problems were assessed in Years 11 through 13 (ages 15–17) using the Youth Self-Report (YSR) and CBCL, respectively (Achenbach, 1991). The highly reliable externalizing problems score (30 and 33 items in the YSR and CBCL, respectively) was used to index daughters' adolescent externalizing problems. A composite self-report externalizing behavioral problems score was computed by averaging self-reports over Years 11 through 13 (a across the three scores = .87,  $M = 10.72$ ,  $SD = 6.29$ ) and a composite mother-report externalizing behavioral problems score was computed by averaging mother reports over Years 11 through 13 (a across the three scores = .90,  $M = 7.91$ ,  $SD = 7.39$ ). The composite self-report and mother-report externalizing scores were moderately correlated,  $r(241) = .52$ ,  $p < .001$ . To

facilitate comparison with rates of early sexual activity and teenage pregnancy, both self-reports and mother reports of both externalizing behavior problems were dichotomized (bottom 85% = 0, top 15% = 1).

*Internalizing behavior problems (adolescence).* Self-report and mother reports of internalizing behavior problems (those behaviors considered to be anxious, withdrawn, or depressed) were also assessed in Years 11 through 13 using the YSR and CBCL (Achenbach, 1991). The highly reliable internalizing problems score (32 items in both the YSR and CBCL) was used to index daughters' adolescent internalizing problems. A composite self-report internalizing behavioral problems score was computed by averaging self-reports over Years 11 through 13 (a across the three scores = .86,  $M = 11.39$ ,  $SD = 7.40$ ) and a composite mother-report internalizing behavioral problems score was computed by averaging mother reports over Years 11 through 13 (a across the three scores = .84,  $M = 7.18$ ,  $SD = 5.98$ ). The composite self-report and mother-report internalizing scores were moderately correlated,  $r(241) = .46$ ,  $p < .001$ . Again, to facilitate comparison with rates of early sexual activity and teenage pregnancy, both self-reports and mother reports of both internalizing behavior problems were dichotomized (bottom 85% = 0, top 15% = 1).

**Method: New Zealand Participants and Overview**

The New Zealand data were collected as part of the Christchurch Health and Development Study (CHDS). The CHDS is an ongoing longitudinal study of an unselected birth cohort of 1,265 children (635 males, 630 females) born in the Christchurch, New Zealand, urban region during a 4-month period in mid-1977 (Fergusson & Horwood, 2001; Fergusson, Horwood, Shannon, & Lawton, 1989). The current research is based on this female subsample, which was demographically diverse and representative of the geographic region (13% Maori/Polynesian, 25% father unemployed or in low-skill occupation, 8% living with a single mother at birth). The girls and their families have been studied at birth, 4 months, 1 year, and at annual intervals to age 16 years, and again at ages 18 and 21 years. In the vast majority of cases (typically 495%) follow-up assessments have been conducted within 4 weeks of the sample member's birthday. Data have been collected from

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a combination of sources including: parental inter-views (birth–16 years), self-report (8–21 years), psychometric testing (8–13 years), teacher reports (6–13 years), medical records (birth–21 years), and police records (13–21 years). In general terms the aims of the study have been to build up a running record of the life history, social circumstances, health, and development of a large cohort of New Zealand children growing up in the 1980s and 1990s. In particular, the study has gathered a wealth of information on family composition, social and family functioning in childhood, and psychosocial outcomes in adolescence.

The present analyses are based on the sample of 520 female cohort members for whom information on the timing of father absence and adolescent outcome measures was available. This sample represented 83% of the original cohort of 630 females and was generally representative of the original sample (13% Maori/Polynesian, 23% father unem-ployed or in low-skill occupation, and 7% living with a single mother at birth). Comparison of the analysis sample of 520 females with the remaining 110 sample members from the original female cohort on a range of sociodemographic measures collected at birth suggested slight but statistically significant ( $p < .05$ ) tendencies for the analysis sample to under-represent girls from socially disadvantaged back-grounds (low paternal occupational status, low maternal education). This raises the issue of the extent to which study findings could be influenced by the effects of sample-selection bias. To examine this issue, all analyses were repeated using the data-weighting method described by Carlin, Wolfe, Coffey, and Patton (1999) to adjust for possible selection effects resulting from the pattern of sample attrition. These analyses produced essentially iden-tical results to those based on the unweighted data, suggesting that the small biases detected in the sample are unlikely to affect study conclusions. Because the two sets of results were mutually consistent, in the interests of simplicity, the results reported here are based on the unweighted sample data.

#### *Timing of Onset of Father Absence*

Comprehensive data were gathered on family composition at annual intervals to age 13, including information on the relationship between the daugh-ter and any adult males in the home. Classification of girls into the three father-absent and father-present groups (early father absent, late father absent, and father present) was based on the same

coding procedures used in the U.S. sample (16% = early father absent, 11% = late father absent, 73% = father present).

#### *Adolescent Sexual Outcomes*

*Early sexual activity.* At each assessment from ages 14 to 16, sample members were questioned concern-ing their sexual behavior, including their experience of consensual sexual intercourse since the previous assessment. At age 18 sample members were again questioned concerning their previous experience of sexual intercourse, and those who reported such experience were asked to report their age at first experience of consensual intercourse. Young women were classified as having engaged in early sexual activity if they had ever reported involvement in consensual sexual intercourse before age 16. Overall, 33% of the sample reported early sexual activity.

*Adolescent pregnancy.* At age 14, the mothers of female sample members were asked whether their daughter had ever been pregnant. From age 15 onwards sample members themselves were ques-tioned about any pregnancies since the previous assessment and, in particular, the timing and out-come of these pregnancies. Young women were classified as having an adolescent pregnancy if they had ever been reported as being pregnant before age 18. Overall, 8% of young women had been pregnant before age 18.

#### *Covariate Factors*

To assess the extent to which associations between timing of father absence and adolescent sexual outcomes could be explained by the effects of child conduct problems and familial and ecological stressors, we included the following 10 variables as covariates in the analysis.

*Early conduct problems (6 years).* When sample members were age 6, maternal and teacher reports of the child's tendencies to conduct disordered and oppositional behaviors were obtained using the 9-item mother- and teacher-report versions of the Rutter Behavior Rating Scale (Rutter, Tizard, & Whitmore, 1970). For the

present analysis the maternal and teacher reports were summed to produce an overall scale measure reflecting the extent to which the child was reported to be exhibiting conduct problems at age 6 ( $\alpha = .83$ ,  $M = 20.44$ ,  $SD = 3.21$ ).

*Maternal age at first childbirth.* The mother's age at first childbirth was assessed during the initial parental interview at the time of the survey child's

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birth. The mean age at first childbirth was 23.7 years ( $SD = 4.2$ ).

*Race.* The sample member's ethnicity was coded as a dummy variable: 0 = European New Zealander (87%), 1 = Maori/Polynesian (13%).

*Maternal education.* The mother's education level was assessed at the time of the survey child's birth and coded into a three-level classification: no formal educational qualifications (50.0% of the sample), high school qualifications (28.3%), and postsecondary certificate or degree (21.7%). Higher scores indicated higher levels of educational achievement.

*Father's occupational status.* Father's occupational status was classified at the time of the survey child's birth using the Elley–Irving (1976) scale of occupational status for New Zealand. This scale classifies families into six groups on the basis of paternal occupation. In the present analysis, the Elley–Irving coding was reduced to a three-level classification as follows: Levels 1, 2 (professional, managerial: 22.5% of the sample); Levels 3, 4 (clerical, technical, skilled: 54.4%); and Levels 5, 6 (semiskilled, unskilled, unemployed: 23.1%). This variable was reverse-scored so that higher scores represent higher occupational status.

*Family living standards (0–10 years).* At each assessment from ages 1 to 10 years, a measure of the quality of the family's standard of living was obtained on the basis of an interviewer rating of family living standards. Ratings were made on a 5-point scale (1 = family obviously poor/very poor, 5 = family obviously affluent and well-to-do). These ratings were averaged over the 10-year period to provide an overall measure of the quality of family living standards during this period (a across the 10 ratings = .92,  $M = 2.16$ ,  $SD = .45$ ).

*Family life stress (0–10 years).* At each assessment up to the child's age 10, parents were questioned about the occurrence of adverse family life events during the preceding year using a 20-item life events inventory based on the Holmes and Rahe (1967) Social Readjustment Rating Scale. For each year, a life events score was calculated for the family based on a count of the number of adverse events reported. To provide an overall measure of the family's exposure to adverse life stress from birth to 10 years, the annual life events scores were summed over the 10-year period (a across the 10 ratings = .80, mean number of adverse life events = 20.80,  $SD = 12.22$ ).

*Marital conflict (0–10 years).* At annual intervals up until the children were age 10, parents were questioned using three items that described the quality of the marital relationship over the previous

12 months. For each item, a count of the number of positive reports over the 10-year period was calculated, and the resulting count measures were combined to produce a scale measure of the extent to which sample members were exposed to parental conflict from birth to age 10 years (Fergusson, Horwood, & Lynskey, 1992;  $\alpha = .66$ ,  $M = 4.24$ ,  $SD = 8.98$ ).

*Early mother–child interaction (3 years).* To provide an assessment of the quality of early mother–child interactions, when sample members were age 3, mothers were assessed on the 10-item Maternal Emotional Responsiveness and 5-item Maternal Punitiveness subscales of the Home Observation for Measurement of the Environment (HOME) Inventory (Bradley & Caldwell, 1977; Elardo, Bradley, & Caldwell, 1977). Each item is scored 0 or 1 to indicate the absence or presence of the target behavior. The Maternal Emotional Responsiveness subscale provides an index of the frequency with which the mother makes positive emotional responses to her child and was scored so that a high score indicates more positive responses ( $\alpha = .69$ ,  $M = 8.44$ ,  $SD = 1.41$ ). The Maternal Punitiveness subscale provides an index of the frequency with which the mother is observed to make punitive responses to her child's behavior and was scored so that a high score implies more punitive responses ( $\alpha = .71$ ,  $M = .82$ ,  $SD = .80$ ).

#### *Measures of Psychosocial Adjustment and Educational Achievement (14–18 years)*

At ages 15 and 16, sample members were interviewed by trained survey interviewers on a comprehensive mental health interview that examined various aspects of the young person's psychosocial adjustment over the preceding 12 months. A parallel interview was administered to parents. At age 18, a similar interview was administered to sample members that assessed the individual's mental health, psychosocial

adjustment, and educational achievement from 16 to 18 years. Using this information, the following additional outcome measures were constructed.

*School qualifications.* School Certificate is a national series of examinations that is undertaken by most New Zealand students in their third year of high school. Students may sit examinations in any number of subjects (typically four or five), and performance in each subject is graded from A to E, with a grade of C or better implying a pass in that subject. For the present analysis, a young woman was classified as having left school without qualifications if she had left school by age 18 years without

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at least one pass grade in School Certificate: This criterion was met by 16.5% of the sample.

*Mood disorder.* At ages 15 and 16, information on the young person's experience of depressive symptomatology was obtained using items from the child and parent versions of the Diagnostic Interview Schedule for Children (DISC; Costello, Edelbrock, Kalas, Kessler, & Klaric, 1982). This information was used to classify young people according to the *Diagnostic and Statistical Manual of Mental Disorders* (3rd ed., rev. [DSM-III-R], American Psychiatric Association, 1987) symptom criteria for major depression (Fergusson, Horwood, & Lynskey, 1993). At age 18 years, the assessment of depressive symptomatology was based on the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. [DSM-IV], American Psychiatric Association, 1994) criteria for major depression assessed using items from the Composite International Diagnostic Interview (CIDI; World Health Organization, 1993). For the present analysis, young women were classified as having a mood disorder from 14 to 18 years if they met the relevant DSM criteria for major depression on the basis of self- or parent-report at any time during the 4-year period: This criterion was met by 37.3% of the sample.

*Anxiety disorder.* Parallel to the assessment of major depression, at ages 15 and 16 sample members and their parents were also questioned about the young person's history of anxiety symptomatology in the previous 12 months using items from the DISC. This information was used to classify young people on DSM-III-R criteria for the following anxiety disorders: separation anxiety, overanxious disorder, generalized anxiety disorder, social phobia, simple phobia, agoraphobia, and panic disorder. As part of the age 18 interview, items from the CIDI were used to assess DSM-IV symptom criteria for the following anxiety disorders: generalized anxiety disorder, social phobia, specific phobia, agoraphobia, and panic disorder. For the present analysis, young women were classified as having an anxiety disorder if they met DSM criteria for any of the preceding disorders over the 4-year period: This criterion was met by 44.6% of the sample.

*Suicide attempts.* At ages 15, 16, and 18, sample members were questioned about their experience of suicidal thoughts since the previous assessment. Those reporting suicidal thoughts were further questioned about any suicide attempts and the frequency, nature, and outcome of any such attempt(s). Overall, 7.1% of the sample reported making at least one suicide attempt during the 4-year period. All respondents who reported suicidal

behavior or other mental health problems were offered assistance in obtaining a referral to an appropriate treatment service.

*Violent offending.* At ages 15 and 16, the young person's involvement in criminal offending over the previous year was assessed using the Self Report Early Delinquency inventory (SRED; Moffitt & Silva, 1988). Similar questioning was conducted at age 18 using the Self Report Delinquency Inventory (SRDI; Elliott & Huizinga, 1989). Using these data, young women were classified as being violent offenders if they reported committing any violent offence (including physical assault, getting into fights, using a weapon or strong-arm tactics to commit a robbery, threatening behavior, and related offenses) over the 4-year period: This criterion was met by 13.7% of the sample.

*Conduct disorder.* At ages 15 and 16, sample members were assessed on DSM-III-R symptom criteria for conduct disorder based on self-reports and parent reports on the SRED (Fergusson et al., 1993). At age 18, DSM-IV criteria for conduct disorder were derived from items in the SRDI. Young women were classified as conduct disordered if they met DSM criteria for conduct disorder on the basis of self-report or parental report at any time during the 4-year period: This criterion was met by 7.5% of the sample.

## Results

### *Statistical Analyses*

As described previously, there were 16 dependent variables to be analyzed: early sexual activity, teenage pregnancy, and six other measures of psychosocial adjustment and educational achievement in each of the two samples. With one exception (GPA in the U.S. sample), all outcomes were dichotomous. Analysis of the associations between father absence and the dependent variables was conducted in several stages.

Before conducting the primary data analysis, preliminary analyses were carried out to test the linearity of the associations between the three-level timing of onset of father absence measure and the dependent



variables. For the 15 dichotomous de-pendent variables, these tests were conducted using the Mantel-Haenszel chi-square test of linearity. Comparison of the Mantel-Haenszel results with the alternative Pearson's chi-square test of indepen-dence showed that, in all cases, the linear model appeared to provide the best fitting and most parsimonious representation of the association. For

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the measure of GPA, similar tests of linearity were conducted within an ANOVA framework. These tests also suggested that a linear model most accurately represented the association. We thus concluded that the relations between timing of onset of father absence and all outcome measures were essentially linear. In all subsequent analyses, therefore, father absence was treated as a continuous (linear) variable, which was coded so that higher scores indicated earlier onset of father absence (0 = father presence, 1 = late onset of father absence, 2 = early onset of father absence).

Treating father absence in this manner is conceptually similar to analyzing age at onset of father absence. Although age at onset might be a more appropriate metric for analysis, detailed information on this variable was available only in the New Zealand sample. Thus, for consistency we have used the same three-level classification of timing of onset of father absence across the two samples. However, further analysis of the New Zealand data indicated that age at onset of father absence correlated in excess of .97 with the current three-level measure. This suggests that similar conclusions would be drawn if more accurate assessments of the timing of father absence were available in both samples.

The principal data analyses were based on a series of regression analyses examining the relations between the timing of father absence and the 16 dependent variables before and after adjustment for child, family, and ecological factors. For binary dependent variables, these analyses were conducted using logistic regression methods in which the log odds of the dependent variable was modeled as a linear function of the timing of father absence and covariates (where applicable). The full covariate adjusted model fitted to the data was of the form:

$$\text{logit}[\text{pr}(Y_i)] = B0_i + B1_iX1 + SBj_iZ_j$$

where  $\text{logit}[\text{pr}(Y_i)]$  was the log odds of the  $i$ th dependent variable,  $X1$  was the continuous measure of timing of father absence, and  $Z_j$  was the set of child, family, and ecological covariates. The parameter  $B1_i$  represents the effect of father absence on the log odds of the  $i$ th dependent variable. A measure of effect size is provided by the odds ratio between the timing of father absence and the dependent variable. The odds ratio represents the multiplicative effect of a one-unit shift in the three-level father absence variable. The corresponding analyses for the continuous dependent variable (GPA) were based on standard linear regression, and the measure of effect size is provided by the

standardized regression coefficient (beta) for the timing of father absence measure.

To illustrate the extent of the association between the timing of father absence and the binary outcome measures after adjustment for covariates, estimates of the adjusted rates for each outcome were computed using the parameters of the fitted logistic regression models. The adjusted rates were computed using the method described by Lee (1981) and can be interpreted as the hypothetical rates of each outcome that would have been observed had all sample members experienced their existing mix of covariate factors but varied in their exposure to father absence.

#### *Rates of Early Sexual Activity and Adolescent Pregnancy by Timing of Father Absence*

Do rates of early sexual activity and adolescent pregnancy differ according to timing of onset of father absence? We expected a dose-response relationship in which early father-absent girls would have the highest rates of early sexual activity and teenage pregnancy, followed by late father-absent girls, followed by father-present girls.

Figure 1 shows rates of early sexual activity and teenage pregnancy in both the U.S. and New Zealand samples according to timing of father absence: Early father absence (beginning ages 0–5), late father absence (beginning ages 6–13), and father presence (ages 0–13). For each father-absent and father-present group, the solid lines in the figure show the percentage of girls who had sexual intercourse by age 16 and the percentage of girls who experienced an adolescent pregnancy. Logistic regression of the data in Figure 1 showed that earlier onset of father absence was associated with a corresponding increase in girls' rates of both early sexual activity and adolescent pregnancy in both samples. For early sexual activity in the U.S. sample:  $N = 227$ ,  $B(SE) = .70$ ,  $w^2 = 20.51$ ,  $p = .0001$ , odds ratio = 2.01; and for early sexual activity in the New Zealand sample:  $N = 520$ ,  $B(SE) = .76$ ,  $w^2 = 38.04$ ,  $p = .0001$ , odds ratio = 2.14. For adolescent

pregnancy in the U.S. sample:  $N = 242$ ,  $B(SE = .23) = 1.15$ ,  $w^2 = 24.97$ ,  $p = .0001$ , odds ratio = 3.15; and for adolescent pregnancy in the New Zealand sample:  $N = 520$ ,  $B(SE = .19) = 1.16$ ,  $w^2 = 38.28$ ,  $p = .0001$ , odds ratio = 3.19. As expected, early father-absent girls had the highest rates of both early sexual activity and adolescent pregnancy, followed by late father-absent girls, followed by father-present girls (Figure 1). For example, adolescent pregnancy rates were approximately 7 times

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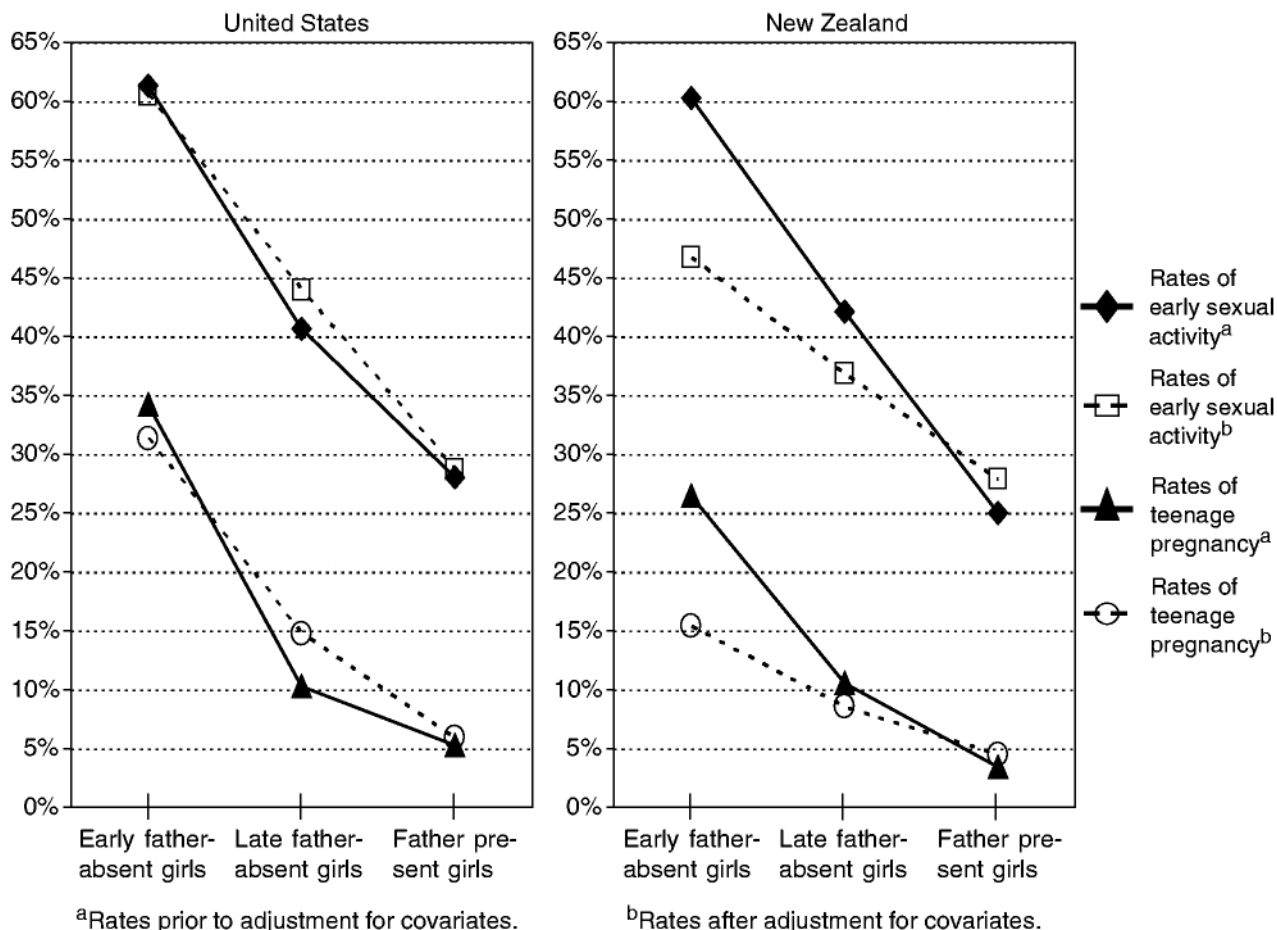


Figure 1. Rates of early sexual activity and teenage pregnancy, before and after adjustment for covariates.

higher in the U.S. sample and 8 times higher in the New Zealand sample among early father-absent girls than among father-present girls. In addition, there was remarkable similarity between the U.S. and New Zealand samples in both the ordering of results across groups and the base rates for early sexual activity and teenage pregnancy within each group (despite the overall base rates' being higher in the U.S. sample).

*Child, Family, and Ecological Factors Associated With Timing of Father Absence, Early Sexual Activity, and Adolescent Pregnancy*

Although the results in Figure 1 indicate that earlier onset of father absence was associated with increased risk of early sexual activity and adolescent pregnancy, it is possible that these associations are due to contextual factors that correlate with both the timing of father absence and early sexual activity and adolescent pregnancy. To examine this issue,

Table 1 displays mean levels of child conduct problems and familial and ecological stressors in relation to (a) the timing of father absence, (b) occurrence of early sexual activity, and (c) occurrence of an adolescent pregnancy. For ease of data presentation, all measures (except for race and mother's age at first birth) have been expressed in standardized form. Mean differences were tested using the *F* statistic.

Table 1 demonstrates the presence of a pervasive relationship between earlier timing of father absence and more exposure to familial and ecological stressors. Across both samples, girls whose birth fathers were absent from an earlier age were more likely to come from socially disadvantaged back-grounds characterized by young motherhood, minority racial status, lower SES, more family life stress, poor

parental relationships (i.e., low dyadic adjust-ment, high marital conflict), and low-quality par-ental investment (i.e., harsh discipline, lack of parental monitoring, low maternal emotional

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Table 1

*Mean Levels of Child Conduct Problems and Familial and Ecological Stressors by Timing of Father Absence, Early Sexual Activity, and Adolescent Pregnancy: United States and New Zealand*

Father absence status				Sexual activity						
Variable pregnant	Early father  <i>F</i>	Late father absence  <i>F</i>	Father presence  <i>F</i>	<i>F</i>	Pregnancy status		<i>F</i>	Pregnant	Not	
					Early sexual activity	No early sexual activity				
United States										
Externalizing problems	0.20	-0.24	-0.08	2.86	0.22	-0.13	6.66*	0.48	-0.09	10.77*** (ages 4–6)
Mother's age at first birth	20.82	22.30	24.84	19.80***	22.69	23.63	1.98	21.68		
	23.51	4.24*								
Race (% other)	32%	21%	8%	19.28***	24%	13%	4.33*	41%	13%	16.65*** SES (ages 1–5)
Family life stress (ages 1–5)	0.43	0.23	-0.35	18.55***	0.17	-0.13	5.30*	0.33	-0.08	4.38*
Dyadic adjustment	-0.79	0.09	0.42	46.26***	-0.34	0.27	21.72***	-0.67	0.15	21.72*** (ages 1–5)
Harsh discipline	0.38	-0.21	-0.19	9.00***	0.22	-0.14	7.52**	0.58	-0.11	15.76*** (ages 1–5)
Harsh discipline	0.25	-0.25	-0.08	3.69*	0.07	-0.06	0.87	0.45	-0.07	7.83** (ages 10–14)
Parental monitoring	-0.47	-0.04	0.30	15.10***	-0.22	0.21	10.14**	-0.66	0.13	18.67*** (ages 10–14)
Neighborhood danger	0.57	-0.08	-0.31	29.39***	0.20	-0.13	7.68**	0.55	-0.11	18.10*** (ages 10–14)
New Zealand										
Conduct problems	0.38	0.20	-0.11	9.25***	0.16	-0.08	6.12*	0.52	-0.05	12.17*** (age 6)
Mother's age at first birth	21.01	22.70	24.43	27.07***	22.29	24.38	30.47***	21.67	23.88	11.03*** Race (% 10–14)
0.64 0.06 19.67***										
Family life stress (ages 0–10)	0.73	0.58	-0.23	42.78***	0.34	-0.16	27.72***	0.79	-0.07	26.79***
Mom emotional responsiveness (age 3)	-0.49	-0.07	0.11	12.61***	-0.16	0.08	6.20*	-0.24	0.02	2.59
Mom punitiveness (age 3)	0.40	-0.19	-0.05	8.15***	0.10	-0.05	2.32	0.48	-0.04	10.14**
Marital conflict (ages 0–10)	1.18	0.59	-0.32	111.10***	0.32	-0.15	23.87***	0.86	-0.07	31.71*** Note. All variables were analyzed using a two-way ANOVA. Comparison of percentages by race are based on the $\chi^2$ test. For the U.S. sample, <i>N</i> s 5 213–243; for the New Zealand sample, <i>N</i> s 5 468–520.
*po.05. **po.01. ***po.001.										

responsiveness). The strong pattern of covariation between timing of father absence and girls' exposure to familial and ecological stressors was similar across the two samples (Table 1).

Table 1 also demonstrates, in both the U.S. and New Zealand samples, that early conduct problems and exposure to familial and ecological stressors during childhood were associated with precocious sexual outcomes. That is, girls who displayed early conduct problems; who were from socially disadvantaged backgrounds characterized by young

motherhood, minority racial status, lower SES, and more family life stress; who were exposed to dysfunctional parental relationships; and who received low-quality parental investment were more likely to engage in early sexual activity and become pregnant as adolescents (Table 1). The overall pattern of relations between girls' early behavioral, familial, and ecological characteristics and their subsequent involvement in early sexual and reproductive activity was again similar across the two samples (Table 1).

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#### *Rates of Early Sexual Activity and Adolescent Pregnancy by Timing of Father Absence, After Adjustment for Covariates*

Next, we examined whether timing of father absence contributed to subsequent risk of early sexual activity and teenage pregnancy, even after controlling for early child conduct problems and familial and ecological stressors. That is, we examined whether father absence constituted an independent path to early sexual and reproductive activity.

The results presented in Figure 1 and Table 1 indicate that although father absence was associated with elevated risk of early sexual activity and adolescent pregnancy, the behavioral, familial, and ecological profiles of father-absent girls were comparatively disadvantaged. Moreover, early conduct problems and exposure to familial and ecological stressors consistently predicted early sexual activity and adolescent pregnancy. Thus, girls' behavioral, familial, and ecological profiles could potentially account for the relations between timing of father absence and subsequent sexual outcomes.

To address this issue, we conducted logistic regressions to estimate the strength of the association between timing of father absence and rates of early sexual activity and adolescent pregnancy after adjustment for child conduct problems and familial and ecological stressors. Ten covariates were simultaneously controlled for in the analyses. These covariates are listed in the first column of Table 1 (see upper section of table for covariates in the U.S. study and lower section of table for covariates in New Zealand study).

As shown by the broken lines in Figure 1, after statistical adjustment for all covariates, there continued to be a linear logistic association between earlier onset of father absence and higher rates of both early sexual activity and adolescent pregnancy in both samples. For early sexual activity in the U.S. sample:  $N = 197$ ,  $B(SE = .23) = .72$ ,  $w_2 = 9.54$ ,  $p = .002$ , odds ratio = 2.04; and for early sexual activity in the New Zealand sample:  $N = 466$ ,  $B(SE = .17) = .45$ ,  $w_2 = 6.75$ ,  $p = .009$ , odds ratio = 1.57. For adolescent pregnancy in the U.S. sample:  $N = 207$ ,  $B(SE = .33) = .1.07$ ,  $w_2 = 10.45$ ,  $p = .001$ , odds ratio = 2.91; and for adolescent pregnancy in the New Zealand sample:  $N = 466$ ,  $B(SE = .26) = .74$ ,  $w_2 = 7.89$ ,  $p = .005$ , odds ratio = 2.09. Thus, even after simultaneously controlling for all covariates, early father-absent girls continued to have the highest rates of both early sexual activity and adolescent pregnancy, followed by late father-absent girls,

followed by father-present girls (Figure 1). For example, after covariate adjustment, adolescent pregnancy rates were approximately 5 times higher in the U.S. sample and 3 times higher in the New Zealand sample among early father-absent girls than among father-present girls (Figure 1).

There was one notable difference between the U.S. and New Zealand samples. Whereas the effects of father absence on sexual activity and adolescent pregnancy remained largely unchanged after covariate adjustment in the U.S. sample, these effects were substantively reduced after covariate adjustment in the New Zealand sample (as shown in Figure 1). To examine which covariates caused this reduction, additional logistic regression analyses were conducted in the New Zealand sample in which father absence was entered into the equation simultaneously with each covariate. This enabled us to calculate the degree to which individual covariates caused a reduction in the effect of father absence (as indicated by change in the odds ratio) on early sexual activity and adolescent pregnancy. For early sexual activity, the following covariates each caused a reduction in the odds ratio at least 10%: mothers' age at first birth, family life stress, father's occupational status, maternal education, and marital conflict. Similarly, for adolescent pregnancy, reductions in the odds ratio of at least 10% were caused by family living standards, family life stress, father's occupational status, maternal education, maternal punitiveness, and marital conflict.

Finally, to examine which group of covariates uniquely predicted early sexual activity and teenage pregnancy after controlling for timing of father absence, we again performed the logistic regression analyses using forward stepwise procedures, forcing the entry of the father absence variable into the equation on the first step and then allowing free entry of all covariates into the equation on subsequent steps. In the U.S. sample, in prediction of both early sexual activity and adolescent pregnancy, only early childhood externalizing problems entered the equation after controlling for timing of father absence. None of the measures of familial or ecological stress, therefore, predicted early sexual outcomes after controlling for timing of father absence and early externalizing problems. In the New Zealand sample, in prediction of both early sexual activity and adolescent pregnancy, both maternal education and family life stress entered

the equation after controlling for timing of father absence. In addition, father's occupational status entered the equation for predicting early sexual activity.



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*Rates of Behavioral Problems and Academic Performance by Timing of Father Absence, Before and After Adjustment for Covariates*

Next, we examined whether father absence dis-criminantly increased risk for adolescent sexual outcomes but not for behavioral and mental health problems in general. To address this question, we conducted the same regression analyses that were conducted in the preceding section, but we substituted different outcome variables for early sexual activity and teenage pregnancy. The outcome measures examined in the U.S. sample included externalizing behavioral problems (ages 15–17; mother report and child report), internalizing behavior problems (ages 15–17; mother report and child report), violent acts (ages 16–17), and high school GPA. The outcome measures examined in the New Zealand sample included *DSM-III-R* diag-noses for conduct disorder, mood disorder, and anxiety disorder (all ages 14–18); violent offending (ages 14–18); attempted suicide (ages 14–18); and failure to attain at least one pass in School Certificate before leaving high school. As in the previous analyses, the effect of timing of onset of father absence on each outcome variable was examined before and after adjustment for all covariates listed in Table 1. The key analysis concerns the effect of timing of father absence after adjustment for covariates. As shown in Table 2 (adjusted rates in parentheses), after statistical adjustment for all covariates, there

were no substantively meaningful linear relations between timing of father absence and any of the measures of behavioral problems (all  $p$  values  $> .05$ ) in the U.S. sample, as indicated by both the low odds ratios ( $range = 1.05–1.35$ ) and relatively flat rates of behavioral problems across the two father-absent and one father-present groups. In addition, after statistical adjustment for all covariates, there was not a substantively meaningful relation between father absence and high school GPA ( $N = 177$ ,  $b = -.11$ ,  $t = -1.43$ ,  $p = .16$ ).

As noted in the Method section, the four measures of externalizing and internalizing behavior problems were dichotomized (to facilitate compar-ison with other outcome variables). Because dichot-omization attenuates the power to detect relations with other variables (MacCallum, Zhang, Preacher, & Rucker, 2002), we also performed the analyses using standard linear regression with continuous measures of the four dependent variables (as described in the Method section). After controlling for the full set of covariates, the effects of timing of onset of father absence on both mother- and daughter-reported externalizing and internalizing behavior problems remained uniformly small and statistically nonsignificant ( $N = 203$ ;  $bs$  range from .01 to .16, all  $ps > .05$ ).

The pattern of results was different for the New Zealand sample. As shown in Table 3 (adjusted rates in parentheses), after statistical adjustment for all covariates, there was a pattern of modest associa-tions between father absence and the measures of

Table 2

*Rates of Behavioral Problems and Academic Performance by Timing of Father Absence, Before and After Adjustment for Covariates: United States*

Timing of onset of father absence				<i>B (SE)</i>	$\eta^2$	p	Odds ratio
Variable	Early onset of father absence	Late onset of father absence	Father presence				
Externalizing problems							
Mother report	25.6%	10.3%	9.8%	.58 (.20)	8.55		
	.003	1.79					
(15.8%)		(13.3%)	(11.1%)	.30 (.36)	0.69		
		.41	1.35				
Child report	15.6%	24.1%	11.3%	.20 (.20)	1.02		
	.31	1.22					
(17.5%)		(14.7%)	(12.3%)	.28 (.36)	0.61		
		.44	1.32				
Internalizing problems							

Mother report	14.1%	24.1%	12.9%	.08 (.20)	0.15
	.70	1.08			
(14.1%)		(13.7%)	(13.2%)	.05 (.31)	0.02
		.89	1.05		
Child report	15.6%	27.6%	12.8%	.14 (.19)	0.52
	.47	1.15			
(18.9%)		(16.3%)	(13.9%)	.22 (.31)	0.49
		.49	1.24		
Violent acts	39.0%	29.6%	15.3%	.63 (.17)	14.22
	o.001	1.88			
(28.1%)		(23.8%)	(20.1%)	.25 (.26)	0.94
		.33	1.28		

*Note.* Percentages after covariate adjustment are shown in parentheses.  $N = 240$  and  $203$  (mother report externalizing and internalizing),  $N = 239$  and  $202$  (child report externalizing and internalizing), and  $N = 236$  and  $202$  (violent offending), before and after covariate adjustment, respectively.

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behavioral and mental health problems, as indicated by both the odds ratios (*range* 5 1.36–1.59) and the modest decline in rates of these outcome variables across the two father-absent and one father-present groups. Most of these associations obtained at least marginal statistical significance.

In sum, in the U.S. sample, after statistically controlling for all covariates, timing of onset of father absence remained strongly associated with early sexual activity and teenage pregnancy but not with other behavioral problems and academic performance. Although the direction of the effects indicated that earlier onset of father absence was associated with more behavioral and academic problems in the U.S. sample, the size of the effects were small and did not approach statistical significance. By contrast, in the New Zealand sample, after statistically controlling for all covariates, there was still a pattern of at least trend associations between timing of father absence and the measures of adolescent adjustment, with odds ratios ranging from 1.36 to 2.09. Although early sexual activity and teenage pregnancy occupied the upper end of this range, and although the odds ratio for teenage pregnancy was substantially higher than for any other variable (1.50 or greater), there was not a clear divide between the effects of father absence on early sexual activity and other behavioral and mental health outcomes. Specifically, after covariate adjustment, the odds ratio for early sexual activity (1.57) was about the same as for conduct disorder (1.59), violent offending (1.56), and no school qualifications (1.50).

### Discussion

Does father absence uniquely and discriminantly increase daughters' risk for early sexual activity and teenage pregnancy, independent of early externalizing behavior problems and exposure to familial and ecological stressors during childhood? In addressing this question, the current research had several important strengths. First, the use of a cross-national research design enabled us to replicate key findings across diverse samples in different countries. Second, in conducting two studies, we were able to carry out independent tests of the hypotheses using different measures and methods. The similarity in results across the U.S. and New Zealand samples underscores the robustness and generalizability of the findings. Nonetheless, it will be important to replicate these findings in non-Western samples (see Waynforth, 2002). Third, the longitudinal nature of the research in which girls were prospectively

studied throughout their entire childhoods enabled us to examine child and family variables that preceded risk for involvement in sexual activity and pregnancy in adolescence. Finally, the use of multiple informants, in which antecedent child and family data were collected from mothers and adolescent sexual outcome data were collected from daughters, makes it less likely that the current findings are an artifact of method variance.

#### *Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?*

Although the current research cannot demonstrate causation, three converging lines of evidence suggest that the answer to this question is yes. First, in both the U.S. and New Zealand samples, there was a dose-response relationship between timing of onset of father absence and early sexual outcomes: Early father-absent girls had the highest rates of both early sexual activity and adolescent pregnancy, followed by late father-absent girls, followed by father-present girls. This dose-response relationship suggests that past research, which has consistently treated father absence as a dichotomous yes-no variable, has underestimated the impact of father absence on daughters' sexual outcomes. This issue may be especially relevant to predicting rates of teenage pregnancy, which were 7 to 8 times higher among early father-absent girls, but only 2 to 3 times higher among late father-absent girls, than among father-present girls.

Second, in both the U.S. and New Zealand samples, father absence constituted a unique and independent path to early sexual activity and adolescent pregnancy. Although measures of early conduct problems and life-course adversity covaried with both timing of father absence and adolescent sexual outcomes, these measures either did not account for (in the U.S. sample) or only partially accounted for (in the New Zealand sample) the links between father absence and early sexual activity and teenage pregnancy. The relations between father absence and teenage pregnancy were particularly robust. For example, after controlling for all of the covariates, early father-absent girls were still about 5 times more likely in the U.S. sample and 3 times more likely in the New Zealand sample to experience an adolescent pregnancy than

were father-present girls. In total, these data suggest that father absence may affect daughters' sexual development through processes that operate independently of life-course adversity and go beyond mere continuation of early conduct problems.

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Third, in the U.S. sample, father absence was discriminantly associated with early sexual activity and teenage pregnancy. This association was specific to sexual outcomes and, after controlling for early conduct problems and familial and ecological stressors, did not extend to academic, behavioral, or mental health problems more generally. In the New Zealand sample, however, the picture was less clear. After covariate adjustment, there was still a pattern of at least trend associations between timing of father absence and the measures of adolescent adjustment, with early sexual activity and adolescent pregnancy occupying the upper end of this range of associations. Considering the U.S. and New Zealand findings together, after controlling for measures of early conduct problems and life-course adversity, the effects of father absence on sex and pregnancy (a) were generally stronger than were the effects of father absence on other outcome variables and (b) clearly replicated across the two studies whereas other effects of father absence were more equivocal and replicated only in the sense of being in the same direction. In sum, after covariate adjustment, there was stronger and more consistent evidence of effects of father absence on early sexual activity and teenage pregnancy than on other behavioral or mental health problems or academic achievement.

It is worth reiterating that all of these conclusions are based on the linear model, which provided the

best fitting and most parsimonious representation of the associations between father absence and the outcome variables. Power would have been low, however, to detect nonlinearity in the U.S. sample (given the use of dichotomous dependent variables and the relatively small sample size in the late father-absent group). The base rates shown in Table 2 indicate nonlinear trends in the U.S. data, with late father-absent girls displaying higher rates of internalizing problems (both child and mother reports) and externalizing problems (child reports only) than either early father-absent or father-present girls. These nonlinear trends did not replicate in the New Zealand data (see Table 3). Nonetheless, the possibility that late father absence places daughters at special risk for some outcome variables deserves further consideration in future research with larger sample sizes.

#### *Implications for the Life-Course Adversity Model*

In the literature on early sexual activity and teenage pregnancy, the life-course adversity model occupies a dominant position. It proposes that a life history of familial and ecological stress—poverty, exposure to violence, inadequate parental guidance and supervision, lack of educational and career opportunities—makes early sexual activity and adolescent pregnancy more likely (e.g., Coley & Chase-Lansdale, 1998; Rindfuss & St. John, 1983).

Table 3

*Rates of Behavioral and Mental Health Problems by Timing of Father Absence, Before and After Adjustment for Covariates: New Zealand*

Variable	Timing of onset of father absence			B (SE)	$\chi^2$	p	Odds ratio
	father absence	Early onset of	Late onset of father absence				
Conduct disorder	16.9%	15.8%	4.2%	.78 (.19)	17.85	.001	2.19
(12.6%)		(8.5%)	(5.7%)	.46 (.27)	3.03	.082	1.59
Mood disorder	54.2%	49.1%	31.8%	.49 (.12)	17.04	.001	1.64
(48.1%)		(40.9%)	(34.1%)	.31 (.17)	3.29	.070	1.36
Anxiety disorder	59.0%	54.4%	40.0%	.41 (.12)	11.72	.001	1.50
(56.5%)		(48.8%)	(41.0%)	.33 (.17)	3.80	.051	1.39
Violent offending	31.3%	14.0%	9.7%	.71 (.15)	23.12	.001	2.03
(21.4%)		(15.2%)	(10.5%)	.44 (.21)	4.28	.039	1.56
Suicide attempt	14.5%	8.8%	5.3%	.56 (.19)	8.33	.004	1.74

	(10.9%)		(8.3%)	(6.3%)	.32 (.27)	1.40	.237	1.38
No school qualifications	35.8%	37.5%	9.3%	.90 (.14)	41.09	o.001	2.45	
(23.7%)		(18.5%)	(14.1%)	.40 (.21)	3.62	.057	1.50	Note. Pe

covariate adjustment, respectively; for all other variables, *N* 5 520 and 466 before and after covariate adjustment, respectively.

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The life-course adversity model has gained wide acceptance through consistent empirical support. Rates of teenage pregnancy have been found to covary positively with family stress, conflict, and disruptions (e.g., Fergusson & Woodward, 2000a; Hanson, Myers, & Ginsburg, 1987; Robbins et al., 1985); with low parental warmth or support, lack of parental control and monitoring, and maternal punitive behavior (e.g., Fergusson & Woodward, 2000a; Hansen et al., 1987; Scaramella et al., 1998; reviewed in Miller et al., 2001); with low SES (e.g., Fergusson & Woodward, 2000a; Geronimus & Korenman, 1992; Robbins et al., 1985); with high neighborhood mortality rates (Geronimus, 1996; Wilson & Daly, 1997); and with minority racial or ethnic status (Cheesbrough et al., 1999; Dickson et al., 2000). The results presented in Table 1 are consistent with this body of research.

As discussed in the Introduction, the life-course adversity model has incorporated father absence as one of many stressors that can influence sexual outcomes. Indeed, as shown in Table 1, timing of father absence significantly covaried with all of the measures of familial and ecological stress in both the U.S. and New Zealand studies. Proponents of the life-course adversity model have recurrently stated that father absence predicts early sexual outcomes because it covaries with these stressors (Belsky, et al., 1991, p. 658; Chisholm, 1999, p. 162; McLanahan, 1999, p. 119; Robbins et al., 1985, p. 568; Silverstein & Averbach, 1999, p. 403).

The current research suggests that the opposite interpretation is equally plausible: Measures of life-course adversity may predict early sexual outcomes primarily because they covary with timing of father absence. In the U.S. sample, father absence predicted early sexual activity and adolescent pregnancy after controlling for early conduct problems and all of the measures of familial and ecological stress; however, none of the measures of familial and ecological stress predicted either early sexual activity or adolescent pregnancy after controlling for timing of father absence and early conduct problems. The results in the New Zealand sample were more equivocal: Both father absence and some measures of familial and ecological stress (i.e., maternal education and family life stress) independently predicted early sexual outcomes.

### *Evolutionary and Social Learning Models*

Given that the life-course adversity model does not appear to explain the current results, the question then becomes: What are the psychological

mechanisms and processes that account for the relations between increasing exposure to father absence and greater risk for early sexual activity and adolescent pregnancy? From a social learning perspective, increasing duration of father absence is associated with increasing exposure of daughters to their mothers' dating and repartnering behaviors, and these exposures may encourage earlier onset of sexual behavior in daughters, with consequent increased risk of teenage pregnancy. As Thornton and Camburn (1987, p. 325) suggest, "We expect that many children know whether their parents are sexually active after a marital dissolution and that formerly married parents who continue to be sexually active serve as behavioral models for their maturing children, thus increasing the children's levels of permissiveness." The social learning model thus posits that the effect of father absence on daughters' sexual outcomes will be mediated by mothers' dating and repartnering behaviors. This hypothesis deserves careful consideration in future research.

Another possibility is that mothers' dating and repartnering behaviors do not fully mediate the relation between father absence and precocious sexual outcomes in daughters. Rather, as discussed earlier, quality of paternal investment may have a direct effect on daughters' sexuality. The current evolutionary model posits that the motivational systems underlying variation in timing of sexual and reproductive behavior are especially sensitive to the father's role in the family in early childhood. According to Draper and Harpending (1982, 1988), girls whose early family experiences are characterized by father absence tend to develop sexual psychologies that are consistent with the expectation that male parental investment is unreliable and unimportant; these girls are hypothesized to develop in a manner that accelerates onset of sexual activity and reproduction, reduces reticence in forming sexual relationships, and orients the individual toward relatively unstable pair-bonds (see also Ellis & Garber, 2000; Ellis et al., 1999). This evolutionary model posits an early sensitive period (approximately the first 5 years of life) for the effects of father absence on daughters' sexual development. Although the current resultsFthat earlier onset of father absence was associated with greater risk for early sexual activity and teenage pregnancyFare consistent

with the sensitive period hypothesis, they do not clearly support it because timing of father absence was confounded with length of father absence in the current research. In total, the current results are equally consistent with



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either a sensitive period or linear dose–response interpretation.

#### *Alternative Behavior Genetic Explanations*

Perhaps the major weakness of the current research design was that it was not genetically informative. As noted in the Introduction, one plausible behavior-genetic explanation for the current findings is that, through genetic transmission, mothers and fathers who have a history of externalizing disorders not only tend to have daughters who experience externalizing behavioral problems (including increased rates of early sexual activity and teen pregnancy) but also tend to disproportionately expose their daughters to father absence and accompanying maternal dating and repartnering behaviors because externalizing disorders predict divorce. A second plausible behavior-genetic explanation is that mothers who experience early age of first sex and pregnancy not only tend to have daughters who experience early age of first sex and pregnancy (through genetic transmission; see Dunne et al., 1997; Rodgers, Rowe, & Buster, 1999) but also tend to expose disproportionately their daughters to father absence and maternal dating and repartnering because young mothers are less likely to form stable relationships with the fathers of their children (e.g., Amato, 1996; Bennett, Bloom, & Miller, 1995).

Consistent with these behavior genetic models, in the current research both early childhood conduct problems in daughters and earlier age at first birth in mothers generally predicted early sexual activity and adolescent pregnancy in daughters. It is important, though, that controlling for both early conduct problems and mothers' age at first birth (along with the other covariates) either did not account for (in the U.S. sample) or only partially accounted for (in the New Zealand sample) the relations between father absence and elevated rates of early sexual activity and adolescent pregnancy. Although these results do not rule out the possibility that common genetic influences underlie the covariation between father absence and precocious sexual outcomes (see especially Comings, Muhleman, Johnson, & MacMurray, 2002), they do make it less likely that the current findings can be accounted for by the specific genetic pathways outlined above.

#### *Conclusion*

Over the last 25 years the field of developmental psychology has experienced a fundamental shift

away from a social address perspective, in which variables such as father absence and social class were studied without explicitly considering how they influenced child functioning, to a developmental process perspective, in which intervening pathways and mechanisms have become of fundamental interest (discussed in Bronfenbrenner & Crouter, 1983). Critiques of the father absence literature (reviewed in Phares, 1996) partly motivated this change. A widely held assumption is that it is not father absence per se that is harmful to children but the stress associated with divorce, family conflict, loss of a second parent, loss of an adult male income, and so on. The current research suggests that, in relation to daughters' sexual development, the social address of father absence is important in its own right and not just as a proxy for its many correlates. This does not imply that process is unimportant, but rather that relevant processes are likely to be father driven (e.g., father–daughter processes, father–mother relationships, exposure to stepfathers; see Ellis et al., 1999).

In conclusion, father absence was an overriding risk factor for early sexual activity and adolescent pregnancy. Conversely, father presence was a major protective factor against early sexual outcomes, even if other risk factors were present. These findings may support social policies that encourage fathers to form and remain in families with their children (unless the marriage is highly conflictual or violent; Amato & Booth, 1997).

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## **Hey, Guys! Do This to Brighten Her Mood - with male sweat**

### **Sweat.**

Turns out that a man's perspiration has a strange effect on a woman: It reduces stress, induces relaxation, and even affects her menstrual cycle. At least that's what biologists from the University of Pennsylvania are reporting in the journal *Biology of Reproduction*.

"This suggests there may be much more going on in social settings like singles' bars than meets the eye," Charles Wysocki, co-author of the study and an adjunct professor of animal biology at Penn's School of Veterinary Medicine, told Reuters.

### **The experiment:**

The Penn researchers collected perspiration samples from the underarms of men who did not use deodorant for four weeks. (Four weeks!) Using laboratory magic, they blended the perspiration extracts and then applied it to the upper lips of 18 women who ranged in age from 25 to 45. For the next six hours, the women rated their moods on a fixed scale. The women had no clue what was swabbed on their upper lips. They were told they were testing alcohol, perfume, or lemon floor wax.

### **The results:**

Something in that male perspiration seemed to brighten the women's moods and helped them feel less tense. Blood analysis also showed a rise in levels of the reproductive luteinizing hormone that typically surges before ovulation, reports Reuters.

### **What does it mean?**

Wysocki said even though none of the women were sexually aroused by the perspiration, there could be a "chemical communication" subtext between the sexes that enables them to coordinate their reproductive efforts subliminally. If the active agent in male perspiration can be isolated, scientists could develop new fertility therapies and treatments for premenstrual syndrome.

*--Cathryn Conroy*

## Human Pheromones

<http://www.cf.ac.uk/biosi/staff/jacob/teaching/sensory/pherom.html>

### **A critical review of the evidence for the existence (1) human pheromones and (2) a functional vomeronasal organ (VNO) in humans**

By [Tim Jacob](#)

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#### Aim

This site is an attempt to assess the available evidence relating to the vomeronasal organ (VNO), human pheromones and their possible role in human behaviour. I hope that it will stimulate discussion and generate new areas of research activity.

Index : [Definitions](#) , [Historical Perspective](#) , [Androstadienone](#) , [Anatomy of the VNO](#) , [VNO structure](#) , [VNO receptors](#) , [VNO - functionality](#) , [Human pheromones](#) , [Odor and major histocompatibility complex](#) , [References](#) , [Summary](#)

#### Definitions

The term pheromone - from the Greek roots of *pherin*, to transfer, and *hormone*, to excite - describes a class of chemicals that are communicated between animals of the same species and that elicit stereotyped behavioural or neuroendocrine responses. Some pheromones - called "releaser" pheromones - elicit an immediate response, while others - termed "primer" pheromones - induce long-term changes in behavioural or endocrine state.

Pheromone-induced responses are mediated primarily by the vomeronasal organ (VNO). The VNO, also known as "Jacobson's organ", is part of an accessory olfactory system. It is present in a variety of non-human vertebrates but its existence in the human has been open to question until recently.

#### Historical Perspective

The VNO was first discovered by Ruysch (1703), a military doctor, in a soldier with a facial wound. The organ was named after Jacobson who published his findings on animals, but not humans, in 1811. Various other investigators have published studies; Potiquet (1891) observed the VNO in 25% of 200 adult humans, Pearlman (1934) described its occurrence in many animals, in human embryos and mentioned that it may be found occasionally in the adult human. (more detail can be found in Moran, Monti-Bloch, Stensaas and Berliner (1994)).

It was work published by Crosby and Humphrey (see below) that put the functional presence of the VNO in the human adult into doubt. In a standard anatomical textbook, "Correlative Anatomy of the Nervous System" by Crosby, Humphrey and Lauer (1962), we read the following; "In some human embryos, an accessory olfactory bulb, with complete representation of layering from the glomerular through the mitral cell layer, is to be found on the dorsomedial aspect of the main olfactory bulb (Humphrey, 1940). The accessory bulb receives the vomeronasal (or Jacobson's) nerve from the vestigial vomeronasal organ, which has also been demonstrated in the human embryo (McCotter, 1912). The vomeronasal nerve and its associated bulb vary in size and may be absent in the human embryo (Humphrey, 1940; Macchi, 1951). This variability appears to be characteristic of these structures in certain other adult primates (Lauer, 1945, 1949) Jacobson's organ and nerve and the accessory olfactory bulb are well developed in certain submammals and some subprimate mammals (Crosby and Humphrey, 1939). They are not present in adult man (Crosby and Humphrey, 1941). In human development these structures are merely ontogenetic signs of the persistence of phylogenetic structures and are without function".

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Largely as a result of the above observations the existence of the VNO in humans has been disregarded. The consensus has been that, if it exists at all, it is vestigial and not functional. As recently as 1991 a paper by Meredith asserted that the accessory olfactory system is not present in humans or other old-world primates. This disregard for the existence of the VNO in adult humans is exemplified by the fact that the area containing the VNO is often removed during plastic surgery on the nose. In 1980, Kreutzer and Jafek documented the early morphogenesis of the vomeronasal organ in the human embryo and early foetus. Later, in 1985, Johnson et al. examined 100 human adults specifically for the presence of the opening of the vomeronasal organ on the antero-interior part of the nasal septum. This was found in 39% of patients. Twenty seven human septums were removed post mortem, and vomeronasal structures were found in 70% of these. However, histological examination failed to reveal any evidence that these organs were functional (Johnson et al., 1985). In the same year, Nakashima et al. studied the VNO and nerves of Jacobson in a 28-week human foetus. They described the structure of the organ and traced the vomeronasal nerve along the nasal septum and through the cartilaginous cribriform plate with the olfactory nerve. While they found evidence for the existence of receptors in the vomeronasal epithelium similar to those in the olfactory epithelium, they suggested that the lack of intraepithelial blood vessels and mitotic figures in the epithelium indicated that the organ was undergoing degeneration at 28 weeks of gestation (Nakashima, Kimmelman and Snow, 1985). Since 1985 there has been a steady accumulation of evidence demonstrating the presence of the VNO in most, if not all, humans (Moran et al., 1985, 1991; Johnson et al., 1985; Stensaas et al., 1991; Garcia-Velasco and Mondragon, 1991, and reviewed in Moran et al., 1995).

[Anatomy of the VNO](#) (click for diagram)

The VNO is located bilaterally on the anterior third of the floor of the nasal septum. It opens into the nasal cavity by a pit which varies in size from 0.2 to 2 mm situated 1-2 cm from the posterior margin of the nostril.

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#### VNO structure

The VNO is lined by a pseudostratified, columnar epithelium some 60µm in depth that lies on a thick basement membrane. The vomeronasal neuroepithelium contains three morphologically distinct cell types; basal cells, dark cells and light cells. The basal cells are small, polygonal, dark-staining cells, measuring 6µm in diameter. The dark cells are tall, slender, columnar cells with densely staining cytoplasm. The light cells are tall, columnar cells that, like the dark cells, extend from the basement membrane to the free surface of the epithelium. They differ from the surrounding cells of the respiratory epithelium in the nose by having no cilia (Moran et al, 1995).

#### VNO receptors

The vomeronasal organ in the human foetus from 12 to 23 weeks is lined by a pseudostratified epithelium, with neurone-specific enolase (NSE) positive cells which resemble olfactory receptors. However, at 36 weeks the organ was lined by a respiratory epithelium and did not show any receptor-like cells, although there were some pear-shaped NSE-positive cells in the upper part of the respiratory epithelium of unknown significance (Boehm and Gasser, 1993). It was suggested that, during the early foetal period, the VNO could have some, as yet unknown, sensory function (op. cit.).

In contrast, calbindin, a 28Kd protein that has been immunolocalised to VNO receptor cells, was found to be expressed in humans, firstly in a male neonate and secondly an adult female suggesting the presence of receptors during early development and in the adult (Johnson, Eller and Jafek, 1994)

Whether or not the VNO continues to express receptor cells or neuronal markers in the adult, the structure itself continues to expand according to Smith et al. (1997). When comparing the increase in length of the VNO in the developing foetus to the length in the adult human, they concluded that further prenatal or postnatal size increase must occur.

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#### VNO - functionality

Compounds occurring naturally on the human skin were found to cause a local depolarisation when applied directly to the VNO (Monti-Bloch and Grosser, 1991). The nature of these compounds was not disclosed. This depolarisation had the characteristics of a receptor potential. Furthermore these compounds did not cause a response from the olfactory epithelium and, olfactory stimulants (e.g. cineole) had no effect on the VNO. Using the same compounds sexual dimorphism was demonstrated in their effect on electrodermal activity (Monti-Bloch et al, 1994). These compounds were subsequently revealed to be 16-androstenes and estrenes (Berliner, 1993; 1994). The androstenes have been previously isolated from human sweat (secreted by the axillary apocrine glands) (Gower et al., 1985).

Another "vomeroherin", pregna-4,20-diene-3,6-dione (PDD), caused evoked potentials in the VNO and also changed gonadotropin pulsatility in males, resulting in a reduced level of luteinizing hormone (Berliner et al, 1996) and testosterone (Monti-Bloch et al, 1998). In addition, PDD decreased respiratory frequency, increased cardiac frequency and caused event-related changes of electrodermal activity in EEG pattern (Berliner et al, 1996).

Is the adult human VNO vestigial?

The overwhelming anatomical evidence suggests that in the adult human the VNO is vestigial (Meredith, 2001). There is no evidence for any anatomical connection from the VNO to the brain. Furthermore, the channel responsible for pheromone transduction in lower mammals, TRP2 (a non-selective cation channel), is a pseudogene in humans. However, this does not mean that human pheromones do not exist. mRNA for a vomeronasal receptor, hV1RL1, has been found in the human olfactory epithelium (Rodriguez & Mombaerts, 2002).

#### Human pheromones

When pheromones were first discovered in the late 1950s they were defined as "...substances which are secreted to the outside by an individual and received by a second individual of the same species, in which they release a specific reaction, for example, a definite behaviour or a developmental process" (Karlson and Luscher, 1959).

Following the pioneering work on menstrual synchrony by McClintock (1971), Stern and McClintock (1998) have shown that odourless axillary compounds from the armpits of women in the late follicular phase of their menstrual cycles accelerated the preovulatory surge of luteinizing hormone of recipient women and shortened the menstrual cycles. Axillary compounds from the same donors which were collected later in the menstrual cycle (at ovulation) had the opposite effect: they delayed the luteinizing hormone surge of the recipients and lengthened their menstrual cycle (Stern and McClintock, 1998).

The work by McClintock is very supportive of the existence of a chemical signal in axillary secretion - a pheromone - but it does not prove the existence of a functional VNO.

#### Androstadienone

Androstadienone is the current best candidate we have for a human pheromone. Is it a component of human (in particular male) secretions. Does androstadienone meet Karlson & Luscher (1959) "pheromone" criteria? In human studies in which androstadienone had access to the olfactory mucosa both physiological and psychological effects have been reported (Jacob and McClintock, 2000; Jacob, Hayreh and McClintock, 2001; Jacob, Garcia, Hayreh and McClintock, 2002 Bensafi et al., 2003; Lundstrom et al., 2003; Bensafi et al 2004a, 2004b; Cornwell et al., 2004). While none of these changes can be regarded as the



behavioural changes required for a compound to qualify as a pheromone, Savic et al. (2001) demonstrated that androstadienone activated the hypothalamus in a gender-specific manner (it activated the hypothalamus in women but not men). Compared with other odorous substances, androstadienone activated the anterior part of the inferior lateral prefrontal cortex (PFC) and the superior temporal cortex (STP) in addition to olfactory areas (Gulyas et al., 2004). The PFC and STP have been implicated in aspects of attention, visual perception and recognition and social cognition.

The definition of a pheromone (see above, Karlson and Luscher 1959) was later modified to include a mutual benefit requirement (Rutowski, 1981). In this context it is possible to see such mutual benefit if the pheromone leads, for example, to choice of partner on the basis of their HLA-dependent odortype to increase immune diversity (Ober et al., 1997, 1999) and lower miscarriage rates (Ober et al., 1998) or if the pheromone participates in the mother-infant bonding process (Schleidt, 1992). On its own it is unlikely to be able to achieve these outcomes but, as recently reported by Coureaud et al (2004), a pheromone can act as a reinforcing agent or a one-trial conditioning agent in which the presence of the pheromone converts a second odour (that of the partner or infant) into a conditioned stimulus.

#### Odor and major histocompatibility complex

Mice can distinguish one another by odour. This odour is genetically determined and partly specified by the H-2 major histocompatibility complex (MHC) (Yamazaki et al, 1979; 1994) on chromosome 17 (Schellinck et al, 1993). There are however other genetic loci coding for odortypes found on the nonrecombining part of the Y chromosome (Schellinck et al, 1993). These odors are excreted in the urine and may play a part in pregnancy block (the Bruce effect), aggression and other mouse social behaviours.

The human equivalent of the MHC locus is the human leucocyte antigen (HLA). Numerous studies have been carried out with humans that suggest that axillary odour contains enough chemical differences in its odour profile to allow for discrimination between individuals. It has been hypothesised that at least some of this individual specific odour may be under the control of human leucocyte antigen (HLA) genes (Preti, Spielman and Wysocki, 1997). Studies have shown that women prefer those male odours that have HLA types different from their own - a preference that was reversed when those women doing the rating were taking oral contraceptives.

Supporting evidence for the existence of individual-specific odour comes from studies in which mothers have identified their own newborn infants from the smell of a previously worn T-shirt (Schaal et al, 1980). In turn, infants prefer breast or axillary pads from their own mothers, distinguishing the odour from other kin (Schaal et al, 1991).

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#### Summary

Pheromones are well established in many species but the their existence in humans is still controversial. Much of the problem lies with the fact that the original definition of a pheromone cannot allow for volitional control over the biological response. Humans have a will of their own and can refuse the biological imperative. How then do you determine if a chemical signal is altering human behaviour? The experiments that have attempted to do this, e.g. by measuring autonomic responses, have had extremely variable results. The results in one lab are different to those in another. This implies that there are too many uncontrolled variables. Humans are obstinately different. They respond differently depending upon whether the experimenter is male or female for instance!

While the behavioral changes induced by axillary secretions are supportive evidence, they have not convinced everyone in the field - measuring menstrual synchrony is a process fraught with problems. Receptors (or at least their mRNA) for pheromones have been found in the human olfactory epithelium, but we are still waiting for someone to demonstrate the presence of a pheromone receptor protein expressed in the surface membrane of an olfactory receptor neuron and that responds to a ligand (a potential pheromone) - as has been demonstrated for the olfactory receptors.

The case for human pheromones is still unproved - watch this space!

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## CHEMICAL EFFECTS ON INTERPERSONAL RELATIONS:

## SIMULATING "THE URGE TO LOVE"

<http://serendip.brynmawr.edu/bb/berman/P1S3.htm>

## Part 1: Section 3

**Pheromones in Humans: Menstrual Cycle Synchronization**

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As I mentioned in the last section, there is good evidence for the existence of the vomeronasal organ (VNO) in various animals such as rodents. This organ has been linked to the detection of pheromones. There is a great debate as to whether humans have a VNO. Some anatomists believe they found pits inside our nostrils that might be the VNO, although it might not be functional. Currently there is no solid evidence for the existence of VNO in humans. However, this does not mean that there may not be other chemosensory pathways involved in the detection of air borne chemicals. Some of the best evidence for the possible existence of pheromones in humans comes from the studies of menstrual cycle synchronization.

After some time of living with my college roommate, I noticed that our complaining due to menstrual cramps came about the same time or within a week of each other. Actually, by the end of the year we could predict when the other would get her period more or less within couple of days of the other. I witnessed the same phenomenon when I lived on a hall group. Though I lived alone, it was obvious that my menstrual cycle usually moved towards other women on my hall and eventually synchronized with theirs.

In 1970, Martha McClintock, a junior at Wellesley, noticed the same pattern amongst her dorm mates and did a senior thesis on this topic. Her study wound up being the first published work that was pretty much an acknowledgment of the fact that women who live together or spend a lot of time with each other have converging menstrual cycles. She postulated that pheromones released from the women's skin glands into the environment were the catalysts of the observed synchronization. That is, women's unique chemicals affected the physiology of others.

In 1988, as a professor of biopsychology at the University of Chicago, McClintock and Kathleen Stern performed further studies in support of the original hypothesis. The researchers determined that compounds taken from underarm secretions of women in the early phase of the menstrual cycle could significantly shorten the cycle of women exposed to these extract. On the other hand, if the compounds are extracted at the mid cycle or during ovulation, the extracts have the opposite effect. So to what extent can we say that pheromones exist and influence the behavior of humans?

The way I want to approach the answer is through a brief examination of the relationship between observation and theory. For instance, we all believe in the concept of energy. However, the truth is that none of us actually *seen* energy. The reason this theory is so prevalent is because there is an overwhelming amount of observations that can be explained through the existence of energy. For instance, if we define energy as the ability to do work, we can say that a ball on top of the table has gravitational potential energy. It possesses it on the virtue of what we defined the concept to be; if the ball falls it can do work on, say, a string by compressing it.

The point here is that scientific theories are a well-defined set of concepts though which we explain our observations. If there are enough observations that fit that concept, we make it a theory. Keeping this in mind I want to turn to evaluating the human pheromone hypothesis.

Although researchers doing work in the area have not yet isolated actual human pheromones, there exist enough observational phenomena which can be accounted for by the concept of such air borne chemicals. The evidence for pheromones in rats is very strong and in some cases the actual pheromones were extracted and characterized. To my surprise, my advisor, Dr. Grobstein, once noted: "What makes you think we are that different from rats?" That is, there is no reason to think that the pheromone phenomenon observed in rodents cannot be extended to humans. However, it should be kept in mind that humans are unlikely to be as strictly beholden to pheromone influence on behaviors such as mating. A female ovulating boar when exposed to a male boar's saliva immediately goes into a spread legged mating postures. Human behavior is just not that clear cut!

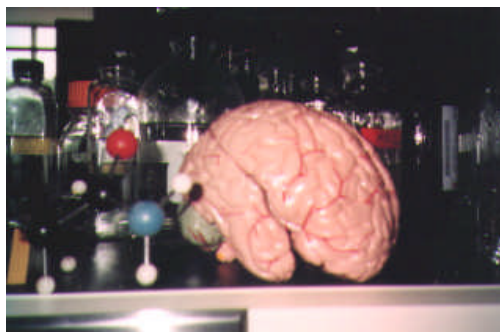


Photo by Rachel Berman

The real significance of pheromones as applied to the broader picture of my research is that

### **PHEROMONES DO NOT GENERATE CONSCIOUS SENSATION**

As is evidenced, there is reason to think that women synchronize their menstrual cycles through some sort of pheromone cues. Thus, it is not so farfetched to say that pheromone cues may have an influence in human attraction and to some degree account for what we call "falling in love," at least the part of the phenomenon that seems to occur "without reason." However, one must keep in mind that convergence of menstrual cycle may or may not occur in some cases. As for the extension of the analogy, pheromones may or may not come into play when one experiences the feeling associated with love. Although chemicals affect behavior, there is much more to the story which I will examine in [Part 2](#).

### **LINKS ON PHEROMONES**

Pheromones in Humans: Myth or Reality  
<http://www.cyborganic.com/people/dpwk/pher.html>

Pheromones: Potential participants in your sex life  
<http://www.cnn.com/HEALTH/women/9906/25/sexuality.scent/#0>

Human Pheromones and Synchronization of Menstrual Cycles  
<http://waru.life.nthu.edu.tw/~frankch/pheromone/human.html>

Debate over the concept of human pheromone  
<http://webmd.lycos.com/content/article/1687.50041>

Paper on Synchronized Cycles  
<http://serendip.brynmawr.edu/biology/b103/f00/web2/braha2.html#4>

Human Pheromones and the Neuroendocrinology of Behavior  
[http://www.fc.net/~zarathus/science/human\\_pheromones.txt](http://www.fc.net/~zarathus/science/human_pheromones.txt)

Pheromones in Insect and Human Pheromones  
<http://www.ultranet.com/~jkimball/BiologyPages/P/Pheromones.html#human>

Health Report on Menstrual Synchrony  
<http://www.abc.net.au/rn/talks/8.30/helthrpt/stories/s11122.htm>

Converging Menstrual Cycles  
<http://students.haverford.edu/wmbweb/writings/joconverge.html>

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[Acknowledgements](#)

## PART 2: ECSTASY, PROZAC, AND BRAIN SYSTEMS:

### Exploring possible origins of “the urge to love”

As is evidenced from the exploration of ecstasy, chemicals can have profound effects on behavior and one’s “urge to love.” An anonymous user of ecstasy conjured up the following poem about his experience:

*LITTLE PILL WHITE AND ROUND  
GULP OF WATER, TURBO DOWN!  
ANXIETY NOW, CAN'T STAND OR SIT,  
JUST WAIT, DON'T WORRY, IT WILL HIT!  
IN HALF-AN-HOUR YOU RISE INSIDE,  
EVERYONE LOVES, NO HATE TO HIDE.  
EVERYTHING'S GOOD, THERE IS NO  
WRONG,  
IF THE WHOLE WORLD SWALLOWED IT,  
EVERYONE WOULD GET ALONG...  
WORLD PEACE I HAVE A VISION,  
CANNOT BE OBTAINED THROUGH  
RELIGION  
BUT CAN BE RESOLVED CHEMICALLY  
THERE IS A GOD CALLED ECSTASY! ”*

*By Anonymous user of ecstasy*



[Photo courtesy of Community Webshots](#)

The poem is a nice introduction to this part of the project because it touches upon the notion that the “urge to love” can be obtained and “resolved chemically.” At the end of [Part 2](#), I introduce the notion that there are actual brain areas which may be concerned with interpersonal relations and are stimulated by drugs such as ecstasy. Basically, I broaden out the framework of thinking about the influence of chemicals on the self by noting which part of the theory of their effect we can’t account for. Various contradictions to the prevailing theory of how ecstasy is thought to effect the brain are examined in [Ecstasy: The Chemical “urge to love” Reexamined](#). In the section on [Depression and Prozac](#), another system in which chemical model does not suffice is examined. The work in these sections is meant to serve as a conceptual structure in light of which I alternative hypothesis originally proposed by Peter Kramer in [Listening to Prozac](#) are examined. This is the notion that there are brain areas concerned with interpersonal relations. More importantly this leads to the implications that knowing chemicals and neurotransmitters is not enough...also it leads to quite a few other interesting implication!

### ECSTASY: The Chemical “urge to love” Reexamined



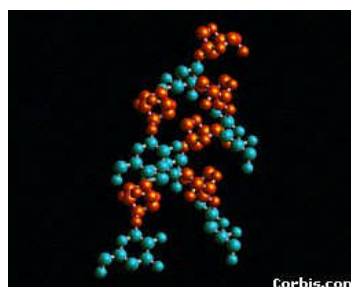


[Photo courtesy of Community Webshots](#)

It has been pointed out by F. Husemann that:

*“The man who sees his neighbor only as an aggregate of atoms cannot have the same conception of his real self. He thus arrives necessarily at a fundamental contradiction.”*

- F. Husemann



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So are there any contradictions if one assumes that ecstasy works by increasing levels of a particular chemical, namely serotonin? Before I turn to exploring the contradictions I want to note the so-called phenomenon of “fad science.” We all heard of fad diets and such but for many like myself, it was hard to accept the fact that certain scientific theories are used over and over without much substance to them. For instance, serotonin is linked to at least a dozen other drugs and disorders, particularly those of the central nervous system. They include depression, obsessive-compulsive disorder, stroke, schizophrenia, obesity, pain, hypertension, vascular disorders, and even nausea and migraines! Before I turn to the problems of the serotonin hypothesis, it is important to see why it has become so popular and the types of hypothesis it has produced.

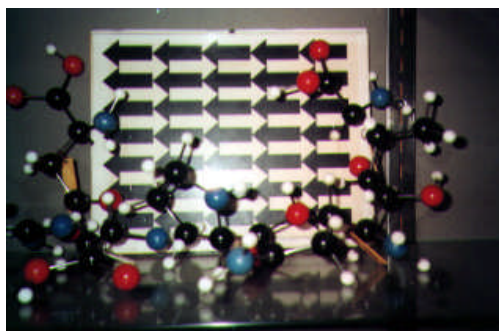


Photo by Rachel Berman

Theoretically, a single chemical such as serotonin is capable in participating in various chemical reactions that produce different products that can, depending on their reactive specificity, go on to react further and cause different products to form. Also various other factors such as relative size of ionization constants of these reactions could influence which reactions predominate and thus which products are present in greater amounts. Therefore, different behavioral patterns may arise depending on the chain of reactions caused by ecstasy and by the concentrations of various chemicals produced. It is conceivable that the chemical reactions behind these behavioral patterns can potentially start from the influence of a single chemical. However, as Yale

neuropsychologist Thomas J. Carew points out: “Serotonin is only *one* of the molecules in the orchestra.” So what are the other molecules and instruments that we are missing in this account? Unfortunately, we can only hypothesize at this point, partly because most of the research is done on rats, not humans, and the experiments, which are done on humans, have quite “shaky data.” It is difficult to reach conclusions from data produced from retrospective research on humans, rather than prospective research. As pointed out at the Novartis Foundation Press Conference: “There is the difference between studying the brains of humans who say they have taken MDMA in the past (whether recently or not) and studying the brains of humans before and after actually giving them MDMA.” In the first case there are obvious methodological difficulties. For example, differences in the brains of MDMA users, compared to non-users who are the control group could be preexisting. Another boundary in understanding the effects of ecstasy has to do with ethical questions. As Professor Ricaurte mentioned at the conference, it is certainly unethical to ask human subjects to be involved in a study whose purpose is to “see whether or not we can destroy serotonin nerve terminals in your brain” and thus get a step closer to other routes of MDMA. So there are uncertainties in the method by which the serotonin theory is constructed and thus its reexamination is necessary. You cannot trust a hypothesis based on an experiment that has shaky data to begin with.

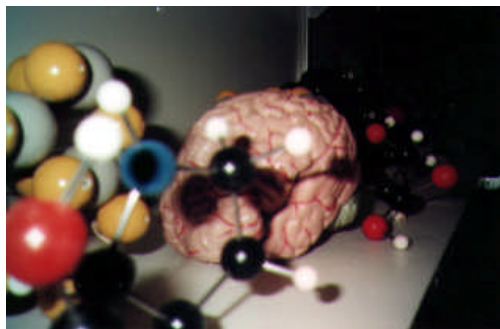
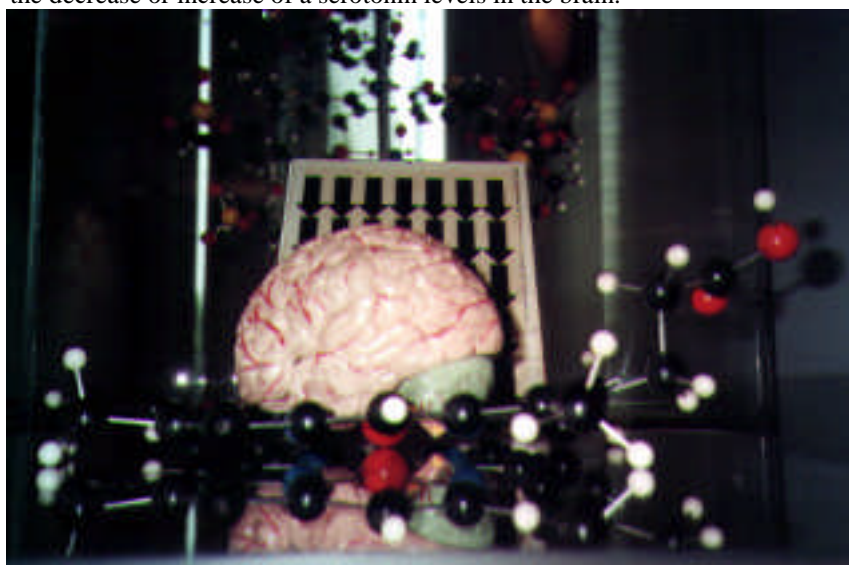


Photo by Rachel Berman

From my research, I noticed that most studies make a lot of generalization about the substances in question. Human beings always strive to sort everything out on shelves. Frankly, this was my problem when I first started to work on this project. I wanted definitive answers. I had big questions and expected to find similar scale answers. As for such an inquiry, as well as the serotonin hypothesis, such an approach produces vague answers. I am now convinced that it is better to have solid answers to small questions rather than a conceptual framework based on generalized answers.

As I mentioned earlier, researchers generalized the task of serotonin to that of “modification of responses of neurons to a range of neurotransmitters.” From this generalization a theory that serotonin influenced mood came about. Although there is a substantial amount of evidence that serotonin does play a role in mood, its role is more subtle and complex. For example, various experiences of users are very specific. That is, while one user gets in touch with his “inner spirit” and expands his mind in a creative manner, another user gets a depressive effect. In between these two ends of the spectrum of experience, there are countless other experiences, the type and degree of which is so finely tuned that it becomes impossible to think that each was brought about merely by the decrease or increase of a serotonin levels in the brain.



by Rachel Berman

As I mentioned previously, it is conceivable that a single chemical starts an array of chemical reactions that might lead to various behaviors. However, to think of human experience as simply a level of a particular chemical is quite limiting in terms of



understanding the nervous system. First of all, there are many other molecules in “the orchestra” that can precipitate in neural communication. Also, chemicals circulating in the fluids of our body can bind and influence neurons, not necessarily at their synapses. Another important question to consider is that if the “high” is produced by high levels of serotonin, why is it not produced in all people taking ecstasy? This suggests that there is something more involved with the experience of the “high.” Even those researchers who support the serotonin hypothesis agree that the brains of individuals are different. Such things as memory and the complex phenomenon we refer to as personality come into play. If they did not, human experience would lose its depth because everyone would respond to stimulation in the same way. Two people would have an identical “high.” Obviously this is not the case. The brains of people must be different in some intricate ways, otherwise the same event would trigger same emotions in two people, this rarely occurs. Basically, this amounts to the fact that the effects of a chemical, such as MDMA, depend on other players (the chemicals and neural aggregations present at the time) as well as what these players are doing at that time.



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If one uses the metaphor of the operation of the orchestra being like the nervous system, it becomes apparent that two peoples' brains have the same instruments (neurons, chemicals, etc.) which make up an orchestra. However, the time at which each instrument plays by itself or in concord with another, the pitch (levels of a particular chemical), and amount and types of instruments present (chemicals and specific neural connections present especially in the vicinity of influence) determine the kind of a symphony played. The brain in this analogy is also different in persons considered due to their genome, previous experiences, personality, environment, and other factors, which come into play when shaping a person's perception of the external world. When one considers the endless possibilities of elements (chemicals, neural connections, etc.) that are involved in the playing out of the symphony, it soon becomes apparent that the symphony, or the depth of human experience, cannot be entirely based on “the one molecule in the orchestra.”

So are there more molecules we should be thinking about? I would imagine there are tons of chemical players and cofactors involved in the serotonergic pathway. Also, there are likely to be other neurotransmitters involved in producing the effects of ecstasy that we don't know anything about. However, what is more important to understand is that it is likely that mind altering substances such as Ecstasy may act on areas of the brain which are concerned with concepts of interpersonal relations as a whole. This is the subject of the [Section 3: Prozac, Empathy, and Brain Systems](#). But before we get there, I examine one other system, which nicely parallels our discussion of ecstasy. This system is another drug, namely Prozac.

## Part 2:Section 2

### Depression, Prozac, and Serotonin...again!



In the following section I present the current theories of how Prozac is thought to treat depression. I chose this drug as a topic of discussion for a number of reasons. First of all, Prozac is the most popular drug for the treatment of depression, anorexia, obsessive-compulsive disorder, etc. It has even been on the cover of Time magazine! It certainly deserved the spotlight. After all, doctors all over the country seen patient after patient come out of depression and get “happy” when on this drug. As applied to interpersonal relations, Prozac was able to make patients relate to others better and in some cases have meaningful relationships they once shunned from. And how is it thought to work? Serotonin again! Seems quite familiar to the explanation behind the effects of ecstasy. Once again lets explore its ins and outs. I hope that after a thorough consideration we can come up with deeper understanding of its effects and relation to the broader picture involving the nature of interpersonal relations. I will start out by pointing out our current awareness of the state of depression, the medium of Prozac’s operation. Also, I will present some of the contradicting issues which arise from implications of what we know and what we do not know about the state of depression and the medium of its conduction - the nervous system. By this time we will have two systems in which on the one side we have chemicals at work but on the other there is something else that contradicts the chemical model. So what is that something else? We will start to get a clue into this in the section on [Prozac, Empathy, and Brain Systems](#) . In this section I expand what we learned so far about nature of interpersonal relationships that expands the theory of chemical effects examined in [Part 1](#) .

### THE STATE OF DEPRESSION



Guernica [by Pablo Picasso](#)

Throughout history, depression was thought of simply as a flawed character condition. Fifty years ago, pharmaceutical treatments for depression did not exist. A major breakthrough occurred in 1974, when a study by scientists at Eli Lilly and Company concluded that a cause of depression is a chemical imbalance manifested by a malfunctioning serotonergic system. Many researchers and doctors asserted: “depression is not a moral weakness, nor mental sloth, but a true brain disease that can be successfully treated.”

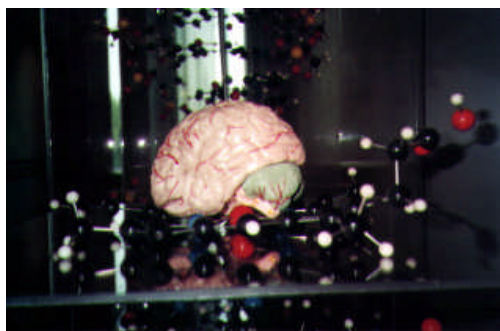
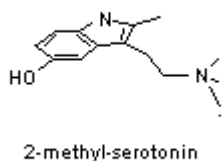


Photo by Rachel Berman

Before accessing the condition, it is important to define some of the major symptoms that together make up what doctors refer to as depression. The physiological symptoms include “feeling sad or anxious most of the day, every day, losing interest in activities you once enjoyed, feeling worthless, guilty, or hopeless, feeling irritable or restless all the time, having trouble concentrating, making decisions, or remembering, having hallucinations (false perceptions) or delusions (false beliefs), and finally, having repeated thoughts of suicide or death or actually making a suicide plan or attempt”. The physical symptoms include: “sleeping too much or too little or waking too early, feeling drained of energy or physically slowed down, feeling tired or weak all the time, losing weight (when not dieting) or gaining weight, having headaches, digestive disorders, or chronic pain that doesn't respond to medical treatment.” There is much more, but this gives a general idea of a depressed person's mental and physical state and points to the fact that depression is “a whole body disease.” According to the latest hypothesis, depression is caused by a low level of a neurotransmitter serotonin in specific areas of the brain. Although this explanation is the current fad of science there has been more research done in this area than in the case of ecstasy. I think there is better evidence for the connection between serotonin level and depression.

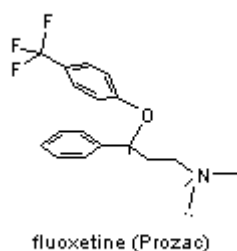
### SEROTONIN AND DEPRESSION



[Image courtesy of Pharmcentral.com](http://Pharmcentral.com)

The connection between depression and serotonin level in the brain was noticed when patients taking a drug Reserpine for hypertension, began to experience symptoms of depression. One of the effects of Reserpine is, in fact, a release of serotonin from pre-synaptic stores. This impairs the serotogenic communication pathway. Also many clinical studies on the spinal fluid which bathes the brain tissue of persons who died with depression, in some cases after suicide, support that serotonin's function in the brains of depressed individuals is impaired or reduced.

### WHAT DOES CHEMISTRY SAY?





Courtesy of [Pharcentral.com](http://Pharcentral.com)

The empirical formula of Prozac is  $C_{17}H_{18}F_3NOHCl$ . The presence of trifluoromethyl substituent ( $F_3$ ) seems to contribute to the drug's high selectivity and thus its ability to inhibit the re-uptake of serotonin. A major mechanism for inactivating serotonin in the brain is its re-uptake by the neuron which released it. Prozac, acts by preventing the re-uptake of serotonin into the nerve terminals. It is thought to accomplish this by actually binding to receptors in the pre synaptic cell, thus blocking the re-uptake of the neurotransmitter. The reason for this is its specificity, it seems to have the right "shape" for fitting into these receptors. By inhibiting the re-uptake process, Prozac enhances the action of serotonin. Same as the case of the explanation for ecstasy.

### ANY CONTRADICTIONS?

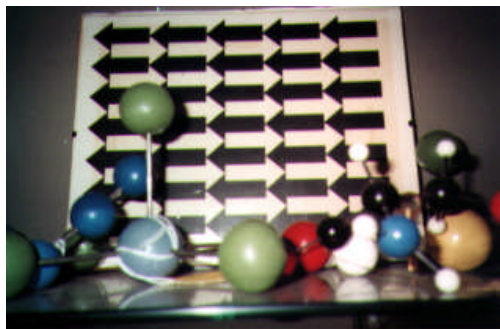


Photo by Rachel Berman

First of all, antidepressants do not work in all of the patients. From the depression hypothesis it would follow that as long as proper levels of serotonin are restored, symptoms of depression should cease. An important fact one must consider is that there are much more factors and interactions that occur in the nervous system. There are many other neurotransmitters that depression is associated with, some that we likely do not even know about. But at least two others are associated with depression- epinephrine and norepinephrine. However, Prozac's effect on these is not known. So the fact that all chemicals can not be accounted for could explain why some people are not "treated by antidepressants." Another area of contradiction lies in the side effects of antidepressants like Prozac. The most interesting of these are anxiety, nervousness, and insomnia. These are the symptoms that Prozac is supposed to treat! In one study, anxiety was reported in 14% of patients taking Prozac and only 7% of patients that were treated with placebo. Thoughts of suicide were also reported as a side effect of the drug and many suicidal patients claimed that their drive increased upon taking Prozac! Various implications could be drawn from this. If a substance which is supposed to treat anxiety is in fact causing it in some patients, then perhaps there is more to anxiety and other aspects of depression than a mere problem with the serotogenic system. Also, it is interesting to note that a person taking Selective Serotonin Receptor Inhibitors shows improvements in his/her state only after several weeks of treatment. This aspect can be attributed to the possible existence of an alternate, or perhaps a different regulatory mechanism that controls serotogenic transmission. If this was not the case, one would expect that as soon as the inhibiting substance is in the system, it will do its thing and serotonin levels will be restored if not immediately, within a few days for sure. But this is obviously not the case. These are the types of glitches doctors are often hesitant to contemplate. They are mostly concerned with alleviating the disease in majority of their patients, which seems to be working.... for whatever reason. It has been mentioned that "serotogenic antidepressants may be particularly useful to some consumers with a character disorder along with depression. Such serotogenic antidepressants may also be particularly useful in some consumers with headaches, and some consumers with obsessive compulsive disorder." This is a rather humorous way to say that the operation of these drugs and their effects on various behaviors and physical symptoms is by no means precisely known. While progress was made, scientists are nowhere near understanding the workings of the brain.

### SO WHAT NOW?

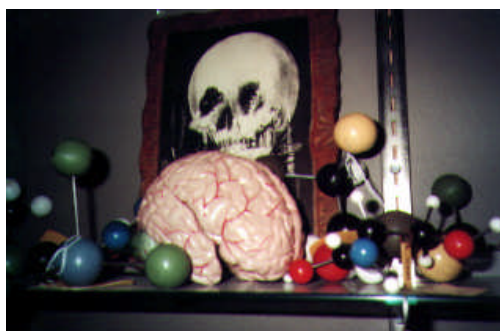


Photo by Rachel Berman

As we already seen in the case of ecstasy, there are contradiction to the theory which views the self as “the aggregate of atoms.” In both cases we seen that there are the chemicals on the one hand and then there is evidence that something else is going on, otherwise we would not have all the problems with the chemical models of these two systems. So what could that something else be? The [next section](#) in which I examine Kramer’s hypothesis might give us a clue in the right direction.

### LINKS for Depression and Prozac

Mental Health Net  
<http://www.cmhc.com/pni/pni23c.htm>

Team Projects on www for Biological Basis of Behavior -1998  
<http://sorrel.humboldt.edu/~morgan/ssri98.htm>

The Harvard Mahoney Neuroscience Institute Letter  
[http://www.med.harvard.edu/publications/On\\_The\\_Brain/Volume2/Special/SPDepr.html](http://www.med.harvard.edu/publications/On_The_Brain/Volume2/Special/SPDepr.html)

Depression  
[http://www.ama-assn.org/insight/spec\\_con/depressn/depressn.htm](http://www.ama-assn.org/insight/spec_con/depressn/depressn.htm)

Health Center: Depression -Biological Cause  
<http://www.health-center.com/english/brain/dep/biocese.htm>

Team Projects on www for Biological Basis of Behavior -1998  
<http://sorrel.humboldt.edu/~morgan/prozac98.htm>

Medical Sciences Bulletin  
<http://pharminfo.com/pubs/msb/venlaf.html>

Antidepressants  
<http://www.lowellgeneral.org/html/Antidepressants.html>

## Part 2: Section 3

### Prozac, Empathy, and Brain Systems



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I would like to start out with a quote from Peter Kramer’s [Listening to Prozac](#)

*“ The self, how it fares in a world where personality is understood as ‘biological and subject to biological influence, is a central issue for our time... Who are we, if we can be so altered by medication? ”*

Peter Kramer, [Listening to Prozac](#) , pg. 332

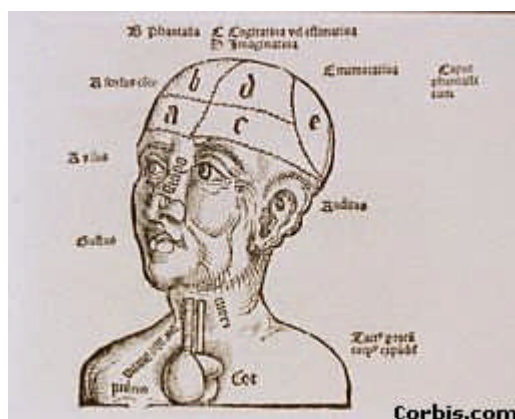
What Peter Kramer did is somewhat remarkable considering his professional training as a traditional analyst coming from an era of psychoanalysts who are preoccupied with details of chemical interactions, neurotransmission, and genetic predispositions. He actually “listened” to his observations of patients taking Prozac. That is, through “talk therapy” he was able to probe something traditional scientists often shun from or simply reduce to biological materialism...the depth of the human “soul.” He noticed that most of the people on Prozac became “better than well.” The pill made them want to talk about their experiences. In general it seemed to reduce separation anxiety by increasing empathy.

A working definition of empathy can be:

**EMPATHY: The capacity for the action of understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts and experiences of ANOTHER.**

Definition from Merriam Webster’s Collegiate Dictionary

Kramer noticed that traditional explanations based on animal models and chemical levels were misleading his conception of the self. For instance, Kramer once had a patient in his office who after he has been given the pills was quite anxious. At first, Kramer attributed this to a common side effect of Prozac that includes nervousness or anxiety in the first couple of weeks. However, when he learned that the patient did not take the pills, he started to “listen” for the roots of the anxiety that seems to come from something deeper. Basically, the explanation for our capacity to feel and vicariously experience the feelings of another human being has to cover more ground than what the chemistry is willing to offer.



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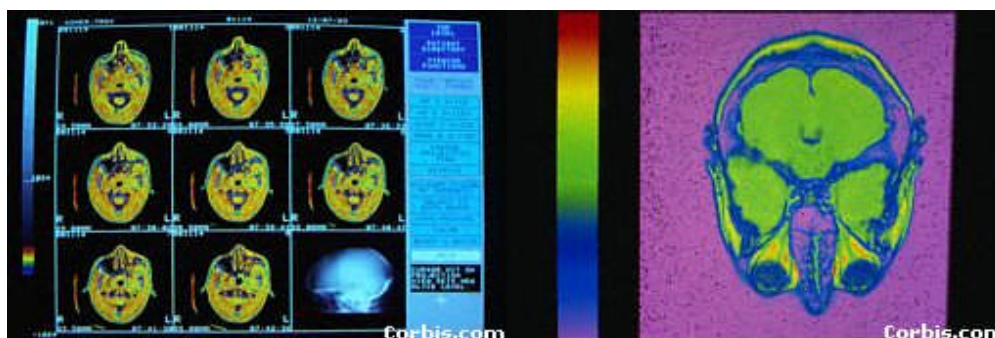
Kramer hypothesized that Prozac is affecting certain AREAS OF THE BRAIN concerned with “feelings of abandonment.” That is, it is not simply a matter of neurotransmitter and other chemical involvement but a matter of a rather malleable material (think of it as a brain area) through which the emergence of something deeper occurs.

I want to make sure that I do not misuse this word in a traditional sense. What I mean by “the soul” is the broader concepts such as anxiety and feelings that are not just a result of the chemical interactions. Think back to the story of the patient I alluded to in

the last paragraph. The patients “self” was in trouble and the way to understand that was to look at why it was so. We had to look at “the aboutness” of the problem.

It is important to note that the idea of a particular brain area processing a particular set of feelings concerned with, say interpersonal relations (which includes the feelings presented by empathy), is not so farfetched in neurobiology research. I already alluded to it in the section on [Pheromones](#) . That is, in the case of mating behavior of hamsters, there seemed to be brain centers that can be stimulated by chemicals such as pheromones or by learned behaviors, such as in the case of male hamsters who had previous encounters with a female. However, that is more of a speculation. More solid support for the notion of brain centers comes from the studies of cocaine effects on the brain.

### ***COCAINE AND BRAIN SYSTEMS***



[Images © by Corbis.com](#)

Most of the progress in this area is actually fairly recent. In the 1990's brain imaging technology called functional magnetic resonance imaging (fMRI) was developed. The usefulness of this technique is that it lets scientists visualize actual AREAS of the brain hypothesized to be active during a particular emotion, say the “rush” or “craving” aspects of drug abuse. Through fMRI studies (which show increased nerve activity in areas of brain when subject is rating their feelings as rush or craving) of cocaine addicts, scientists determined that certain parts of the brain are responsible for rush versus craving feelings associated with cocaine use. For details of the study go to [http://www.drugabuse.gov/NIDA\\_Notes/NNVol13N5/Cocaine.html](http://www.drugabuse.gov/NIDA_Notes/NNVol13N5/Cocaine.html) . Also, it was discovered that brain systems, which are now termed Dopamine systems, are actual brain areas that are stimulated by certain drugs such as cocaine and heroine. From here came the hypothesis that these brain systems are responsible for information processing with regards to stimulus associated with pleasurable input or act.

### **CONCLUSIONS**



Photo by Rachel Berman

Kramer's thesis is a wonderful starting hypothesis that is supported by some current scientific findings in brain research, particularly in cocaine usage. It thus adds to our chemical model to a great extent. Also, it is testable in some ways. That is, if we assume that there actually exist specific brain areas concerned with “feelings of abandonment” and interpersonal relations in general, a good experiment would be to examine cases when a person is incapable of having such relations. This is the subject of the next part in which I examine [Autism](#) . The cover of Peter Kramer's book shows a man actually “taking off” his face off leaving behind a blank surface in its place. Questions such as what is the real self come into play here. I am not about to even try to answer such question, but at this point I can based on our discussion so far HYPOTHESIZE that

## **THERE ARE BRAIN CENTERS CONCERNED WITH INTERPERSONAL RELATIONS**

What happens when these are damaged or not developed is the subject of **Part 3** .  
**LINKS on BRAIN SYSTEMS and COCAINE**

Cocaine Activates Different Brain Regions for Rush Versus Craving  
[http://www.drugabuse.gov/NIDA\\_Notes/NNVol13N5/Cocaine.html](http://www.drugabuse.gov/NIDA_Notes/NNVol13N5/Cocaine.html)

Center for Neural Bases of Cognition  
<http://www.cnbc.cmu.edu/announcements/schedules/April.2000/abstract.Montague.April.27.2000.html>

The Use of Cocaine Causes Brain Lesions  
[http://www.epub.org.br/cm/n08/doencas/drugs/cocaine\\_i.htm](http://www.epub.org.br/cm/n08/doencas/drugs/cocaine_i.htm)

Monkeys on Cocaine Can Survive Repeated Brain Probes  
<http://www.vivisectioninfo.org/yerkeszczoty.html>

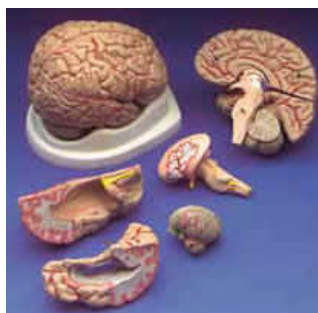
New Brain Studies Yield Insights Into Cocaine Binging  
<http://www.nida.nih.gov/MedAdv/MAs-yr96.html#11-29>

Cocaine Dependence And Withdrawal: Neuroadaptive Changes In Brain  
<http://www.cocaine.org/cocabrain/index.html>

Cocaine, Speed Changes Brain In Rats  
<http://www.personalmd.com/news/a1999050514.shtml>

### **Part 3: AUTISM AND BRAIN SYSTEMS**

#### **Dysfunctions in the centers of the “urge to love”**



© [Tri-Ess Sciences, Inc](#) .

In the last section we saw that it is plausible to hypothesize that there could be actual areas of the brain that are concerned with interpersonal relations. If these centers of the brain are damaged, it follows that the person will not experience the same “urge to love” that a “normal” person would. By “normal” I mean a person whose brain centers of interpersonal relations are functioning as they are meant to do. Of all the developmental disorders (and there are many! Asperger Syndrome and Landau-Kleffner Syndrome, to name a few), autism is perhaps the most fascinating, the most mysterious, and in many ways the most relevant to our discussion of love. Autism is a complex developmental disability whose signs begin to appear in the first three years of a child’s life. For instance, autistic babies are very uncomfortable with being touched and arch their backs away from the person trying to pick them up. Also, they are often passive or overly agitated and avoid physical contact in general. As children they do



not seek out to make friend and shun from any kind of social interactions. Another major characteristic of an autistic person is that he or she has problems with communication skills and in some cases has speech impairment.

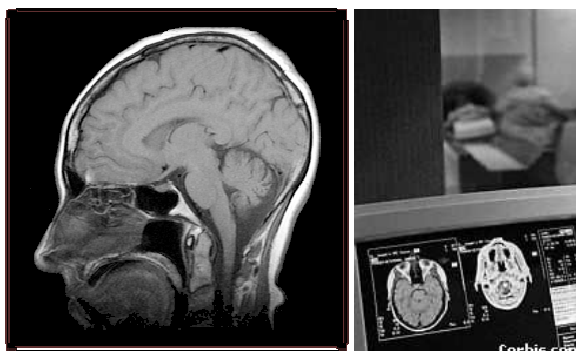
Autism used to be considered a consequence of maternal depravation. This seemed plausible at the time since a lot of behavioral studies indicate that children who are deprived of maternal touch and affection do not develop normally. They often have inability to get close to others and shun from touch. This again leads to a conclusion that the brain is a malleable entity that can be influenced and changed structurally by various experiences.

In the case of autism, however, it is now clear that the disorder has a genetic component. Also, it seems to be the case that *specific areas of the brain* are damaged in the autistic person.



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Significant number of advances have been made in the past few decades in regards to the causes of autism. The various examination of brain anatomy and physiology of autistic people gives us enough of a clue to the nature of this syndrome. The techniques that gave the most information are actually pretty trusted brain imaging techniques such as magnetic resonance imaging MRI, event related potential (EPR), as well as EEG measurements. I will not go into the details of these techniques since for the purposes of this discussion, I will outline the major research findings.

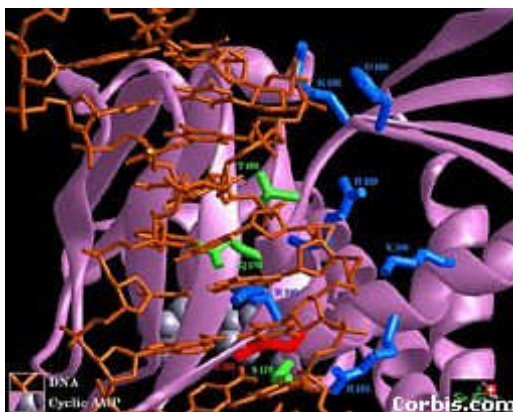


[MRI image © J.P. Hornak](#) [Image © Corbis.com- Owen Franken](#)

Scientists can visualize brain areas of autistic people (using MRI images) as well as study how active they are, i.e. how much electrical activity is seen (remember neurons communicate through electrical signals!). Abnormal brain wave patterns can also be diagnosed by analyzing the EEG patterns of autistic individuals during sleep. These finding are compared to brains of normal individuals. After enough cases scientists can see which areas of autistic individuals behave and look significantly different from “normal” brains.

As I already mentioned, there is a genetic component involved in autism. In a significant subgroup of people with autism there seemed to be a genetic susceptibility that has been proposed to involve more than one gene and may differ across families. Although efforts are underway, actual genes for autism were not identified. These genes are considered to be involved in caring the genetic material that encodes the brain structures and biochemistry of an autistic individual.

The substantial research findings in the area indicate that there are actual functional and structural abnormalities in several brain regions of autistic individuals. The regions are very specific. They have been identified to be in the amygdala, hippocampus, septum, mammillary bodies, and the cerebellum. Actual dysfunctions in the neural structures of these areas has also been identified.



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Interestingly, I came across some studies that point to the idea that the actual biochemistry of these brain areas is also dysfunctional. It is somewhat misleading to differentiate between dysfunctions in neural structure and biochemistry of the brain. We already saw in [Part 1](#), that chemicals influence behavior and in [Part 2](#), I alluded to the idea that the way chemicals do this is through their effect on actual brain areas. So we should keep in mind the interaction between the neural structure (brain organization) and the chemistry which takes place in its medium.

What is important to note at this point is that autistic people, while they have problems with social interaction and communication skills, are quite intelligent. Most are perfectly capable of functioning in school at an intellectual level. This brings to the interesting observation that can be made:

**THE BRAIN IS ORGANIZED IN SUCH A WAY THAT DYSFUNCTION AT ONE LEVEL OF ORGANIZATION (damage to a particular area of brain) IS RESPONSIBLE FOR A FAIRLY SPECIFIC BEHAVIORAL ABNORMALITY (inability to have “normal” social and communication skills).**

So another thing which [Kramer's observations](#), as well as research on autism, teaches us is that the brain must be organized in such a way that we are capable of the “urge to love.” One question which I originally had in mind when I started this research was on the lines of: Why is it that people behave well towards others (a behavior that is manifested in the “urge to love”)? There are actually two issues here. The first one is *why* in a *personal sense*, and another one has to do with the question of *why* in an *evolutionary sense*. I think that taking from the discussion so far, I can answer the first one to a fairly general, but a substantial, extent.



### Adept in Transit

It seems to be the case that the organization of our brain is such that “the urge to love” originates in certain brain systems that process such feelings and social interactions in general. Also, the “urge to love” must originate in these brain systems for if they are damaged, the person no longer will experience it. In fact, he or she will not seek out ways to be close to others, both in emotional and in a physical sense. The other issue I mentioned has to do with my question of the origins of “the urge to love” in an *evolutionary sense*. This is the subject of the next section.

### **LINKS for AUTISM**

Autism Resources Links

<http://www.autism-resources.com/links.html>

Neuroanatomical and Neurophysiological Clues to the Nature of Autism

[http://www.mattababy.org/~belmonte/Publications/Papers/98\\_Garreau/](http://www.mattababy.org/~belmonte/Publications/Papers/98_Garreau/)

State-of-the-Science in Autism: Report of the Autism Working Group to the National Institutes of Health (NIH)

<http://www.nectas.unc.edu/ficc/ficc9711/Bristol.htm>

Autism Society of America

<http://www.autism-society.org/>

The Cerebellum and Autism

<http://www.autism.org/cerebel.html>

Theory of Mind and Autism

<http://www.autism.org/mind.html>

Social Behavior in Autism

<http://www.autism.org/social.html>

## **PART 4: GENES, ALTRUISM, AND EVOLUTION Examining the “urge to love” in an evolutionary sense**

### **Section 1: Altruism and Genes**



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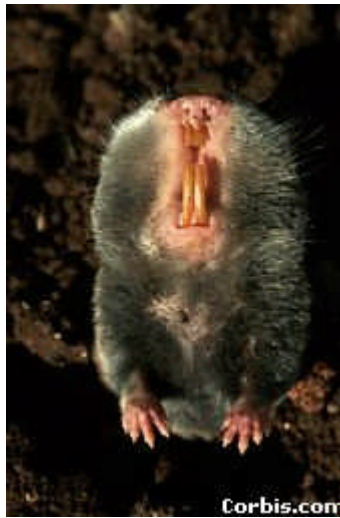
In the previous section I noted that the “urge to love,” when we consider it in a *personal* sense, is likely to originate in specific areas of the brain which are concerned with interpersonal relations. As we saw in [Part 1](#), this urge may be influenced by chemicals. In this part, I explore the question: Why do we behave well towards others in an *evolutionary* sense. A good “system” for the investigation of evolutionary reason for the “urge to love” is the phenomenon of altruism that has been extensively studied by scientists. Darwinian concept of survival of the fittest, i.e. organisms best adapted to their environment and able to leave the largest number of offsprings, is undoubtedly the core stone of modern evolutionary theory. However, animals often behave in ways that seems to endanger the individual and decrease its chance of surviving and passing on its genes in reproduction. There is a significant amount of fascinating behavioral studies done in *altruistic* behavior of animals. A working definition of altruism can be:

**ALTRUISM: a behavior that decreases the reproductive success of one organism to the benefit of another.**



Gray Squirrel

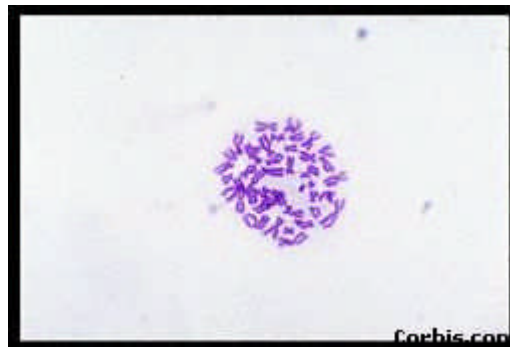
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Mole Rat

[www.corbis.com/Jeffrey L. Rotman](http://www.corbis.com/Jeffrey L. Rotman)

Examples of altruistic behaviors are vast and well studied. Certain birds have been observed to throw themselves in front of the predator as to protect their young or even to sacrifice themselves for the entire flock. Even in colonies of Belding ground squirrels, certain organisms sacrificed their lives just to warn the rest that danger is nearing. Naked mole rats do not reproduce but instead devote their lives to caring for offsprings of the queen. Similar behaviors have been observed in ants and honeybees. Worker honeybees give up reproduction to care for the offsprings of the queen and ants often sacrifice their lives to protect the nest.



Chromosomes

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These types of behaviors pose “the problem of altruism.” It has been proposed that organisms that are predisposed to altruistic behaviors are likely to have an “altruistic gene” or some combination of genes that interact to produce brain systems giving rise to such a behavior. According to Darwinian concepts of natural selection, it makes sense that the individuals who are altruistic would eventually be “selected against” since they would die off without the propagation of their genetic material. So how do we explain the fact that this is not the case? Could it be that altruism is in fact, selfish? It is entirely possible that natural selection can also operate on the level of a gene. For instance, one way that genes can be preserved by an individual organism performing an innate behavior (behavior that has an underlying genetic component) is by enhancing the survival of other copies of itself. By throwing itself at the predator, a bird is sacrificing its life but the lives of the entire flock are saved. That is a hell lot of genes! So in that sense, the “altruistic gene” has been said to be a *selfish gene*. Richard Dawkins wrote an entire book called the [\*Selfish Gene\*](#) (its quite engaging reading and I would highly recommend it). Another concept which explains altruistic behaviors through selfish motives is that of *kin selection*. From a statistic viewpoint, individuals who are closely related are most likely to carry the same genes. An organism that helps promote survival of these genes through inherited behaviors of its close relatives is actually maximizing the survival of greater number of its own genes (remember the bird sacrificing itself... the flock along with all those genes can fly away!).



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Lets take the example I used earlier in discussion of honeybees. It turns out that male honeybees have one copy of each of their genes (are haploid). Female honeybees, on the other hand, have two copies of their genes (are diploid) and on average share about 75% of their sisters' genes. If female workers would reproduce they would share only 50% of the genes of their offspring. So by Darwinian concepts it makes sense that the female workers are better off helping their mother raise more of their sisters since they share more genes with them than would an offspring. So in essence they are inherently being "selfish" even though outwardly they altruistically "give up" mating and reproduction. So is it the case that human beings do seemingly altruistic things for selfish reasons? Is mother's love selfish? If so, where is the selfishness rooted in? Is love selfish? Is our ability to experience love rooted in evolutionary history? I will try to make sense of these questions in the Next Two Sections.

#### **LINKS on ALTRUISM**

The Problem of Altruism

<http://www.spectacle.org/297/alt.html>

Trivers' Reciprocal Altruism

<http://www.cogsci.soton.ac.uk/~harnad/Hypermail/Cognition.Sociobiology.98/0053.html>

Objectivism In-Brief: Altruism

<http://www.vix.com/objectivism/Writing/InBrief/altruism.html>

THE EVOLUTION OF RECIPROCAL SHARING

<http://weber.ucsd.edu/~jmoore/publications/Recip.html>

ORIGINS OF VIRTUE

[http://www.independent.org/tii/content/pubs/review/books/TIR31\\_Ridley.html](http://www.independent.org/tii/content/pubs/review/books/TIR31_Ridley.html)

PART 4: GENES, ALTRUISM, AND EVOLUTION Examining the "urge to love" in an evolutionary sense

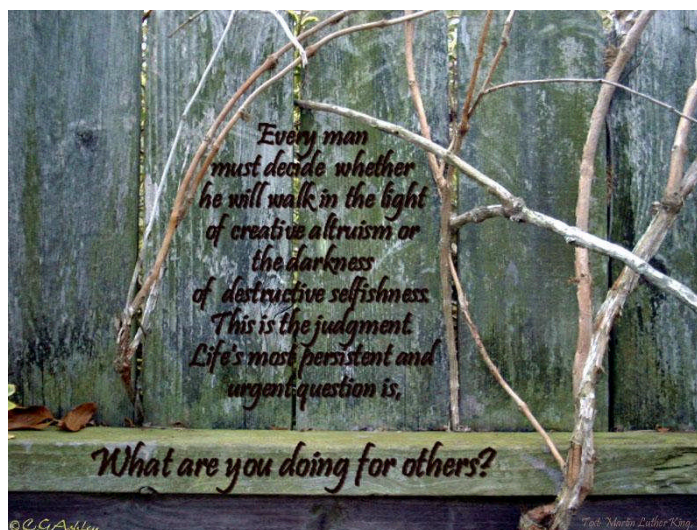
Section 2: "Human Nature" and the "feel good" of it all





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In the last section we encountered some theories that scientists use to explain altruistic behavior in animals in terms of selfish motives. These selfish motives were in some ways rooted to the evolutionary process. The argument is centered on Darwinian concepts of natural selection in which propagation of one's genetic material or that of the entire species becomes central to altruistic behavior explained through selfish motives. But what about the case of altruistic tendencies of human beings? An interesting example to consider is the Federal Aviation Administration (FAA)- approved script that is recited by stewardesses in just about every airline. The stewardess warns everyone that in an event of an emergency a person should PUT ON HIS OWN mask before attempting to help others. One observation, which can be drawn here, is that there is something almost instinctive about *human nature* so that the person is likely to help someone next to them with the oxygen mask before putting it on himself. In fact, it is so immediate in some people that the FAA felt compelled to warn passengers against it! If in fact a passenger did assist another before himself, he would pass out before he would finish securing a mask on the other person. So everyone would die! The moral of this story is that altruistic behavior is in some ways engrained in *human nature*. This is so compelling that the FAA put in the script to warn everyone against such attempts. So what do we mean by human nature? I already alluded to the genetic factors ([Part 4, section 1](#)), as well as chemical influence ([Part 1](#)) on behavior. Also we saw the possible involvement of brain areas in "feelings of empathy" ([Part 2](#)). But let's go back to the broader picture for a moment and see what philosophers have to say on the topic. Human nature is actually the central concept behind moral theory and there is a lot written on the topic. Let's take the writings of David Hume, a Scottish philosopher (1711-1776) whose discussion of human nature is quite relevant to our inquiry of altruistic behavior in humans. David Hume wrote extensively about "human nature" and developed a theory of universal notion of what people are like. I think this is worth examining if only for the sake of having an example from history (the oxygen mask example is actually recent, Hume wrote back in 18th century and they did have planes yet!). To prove his theory of universality of "altruistic" sentiments, Hume appealed to occurrences of some of these strong sentiments that each of us must have experienced. It is easy to comprehend that joy and happiness gives one pleasure, while pain and suffering of others makes one uneasy. From his own accounts, Hume tells us of the immediate anger he *feels* when he knows that someone had wronged his neighbor by trying to steal his inheritance. But he has only "agreeable emotions" from "prospect of joy" that is clearly present in a friendship or a love affair. When watching theater, one has feelings of pleasure from characters representing all that embodies "gentleness and tranquility." However, according to Hume, violent scenes, such as murder, make one despise the character that commits them. When reading historical accounts, we also tend to sympathize with the oppressed and resent the oppressors: "our hearts beat with correspondent movements to those described by historians." In all these instances, "fear and malice excites in one a "powerful concern." In various accounts, Hume rejects the theory of sentiments based on self interest because he is arguing that the observations that human beings tend to give preference to a beneficial character or system of conduct over a malicious one, is rooted in a much more "universal and extensive" of people. From nature, custom, and habit, came a universal "unalterable standard" by which we judge what is good and what is bad. The concept of universality entails a collective notion, which exists and operates everywhere and under all conditions. I think that Hume was right in his observation that there is something in human beings, which causes them to act altruistically to an extent that it makes them *feel good* (I will expand on this notion in the Next section). However, the problem here is that he rooted his theory in "unalterable standard" which he implies is within our nature and which makes us act well towards others.



[Courtesy of Community Webshots](#)

So what did Hume mean by “human nature” as it connects to this “unalterable standard”? Philosophers have an interesting way of using concepts such as human nature in rather broad terms without narrowing in on the *meaning* of terms used. Ask Hume what is Human nature and he is likely to appeal to the notions of “what we are like.” Let’s be a little more scientific than that...an interesting thing that I discovered is that you can still do that and not let go of the broader picture (that is if you are a good scientist). So far we’ve seen that chemicals affect the brain and the way the brain is organized gives us the starting material for experiencing “the urge to love.” Remember the thought experiment we did in Part 3 when we “cut” the centers of the brain hypothesized to be concerned with interpersonal relations. What happened then? The “urge to love” was no longer experienced by the person. Taking from these observations we can say that the brain is organized in such a way that, generally speaking, we have a concern for others that makes us *feel good*. It seems to be the case that the concern originates in specific areas of the brain, which are influenced by factors such as genetics, which in turn influence brain circuitry and such. However, it is not the case that the “urge to love” is universal in both the personal and evolutionary sense. There are cases where the human brain does not feel the universal sentiment Hume talked of. Take the case of depression where a person’s picture of the world is far removed from the ability to experience joy and happiness. Once ability to see the “good” in theater is highly colored by what’s inside the human brain; often doctors describe depressed people as “half alive” and unable to experience “normal” emotions of pleasure and joy. It is also possible to imagine an individual makeup that sees the world as completely different from Hume’s conception. That is, just like a person can “feel good” through doing altruistic behaviors, i.e. have something innate in his brain leading him to such an act (remember the oxygen mask example), he can have the makeup of feeling good about seemingly malice acts. I think there are enough observations to say that the *feel good* of some people is gotten through violence and everything but the altruistic behaviors we are capable of. There is an enormous amount of literature written on the psychology and physiology of the brains of serial killers but none of the theories are conclusive. For the purposes of the discussion here I will focus on altruistic capabilities of the human brain and their roots. So I will now turn to the question of evolution. Is it the case that evolutionary process played a role in the development of such tendencies?

#### **LINKS on ALTRUISM**

The Problem of Altruism

<http://www.spectacle.org/297/alt.html>

Trivers' Reciprocal Altruism

<http://www.cogsci.soton.ac.uk/~harnad/Hypermail/Cognition.Sociobiology.98/0053.html>

THE EVOLUTION OF RECIPROCAL SHARING

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ORIGINS OF VIRTUE

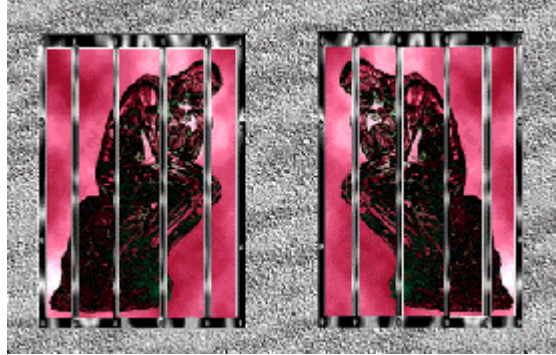
[http://www.independent.org/tii/content/pubs/review/books/TIR31\\_Ridley.html](http://www.independent.org/tii/content/pubs/review/books/TIR31_Ridley.html)



## PART 4: GENES, ALTRUISM, AND EVOLUTION

### Examining the “urge to love” in an evolutionary sense

#### Section 3: Game Theory and Evolution



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A lot of discussions of “human nature” and evolution often get down to a game theory called [Prisoner’s Dilemma](#). It is actually a very useful tool for analyzing the type of altruistic behaviors we have been talking about thus far. I will briefly summarize the basic scenario and go into its evolutionary implications.

In the basic scenario after which the game theory is named, two prisoners are known to have committed crime X. However, the police want to convict them of a more serious crime Y. The two prisoners are held in separate cells and are offered a deal:

- a) The one who testifies against the other implicating him in crime Y will go free, while the other one will receive 3 years in prison. This is called the “sucker’s payoff.”
- b) If both betray, or testify against each other, each will receive 2 years in prison
- c) If both remain silent, they will be convicted of crime X and serve 1 year in prison.

There are actually two choices here, to cooperate (remain silent in this scenario) or to betray. Cooperation technically means that you serve 1 or 3 years. In case of betrayal you may serve 0 or 2 years depending on the other prisoner’s choice. Since you don’t know how your partner will react (you are in different cells and can’t talk!), a reasonable thing to do according to Darwinian rules of survival is to do what gives you the most advantage (remember the [survival of the fittest](#) model). And that is to maximize the upside (zero years in prison) and minimize downside (get 2 instead of 3 years). When this game is played over and over in a programmed fashion, it turns out that the outcome is better for both players if they always cooperate than when they always defect. That is, in the first case, both will have a less total years in prison. Now if you play the [game](#) so that you do on this move what your partner did on the last move (called [Tit a Tat strategy](#)) the case is that cooperation is rewarded and defection punished (if you betray me, I will betray you on the next move!) The downside of this strategy is that you will never draw more points, i.e. get less years in prison than your partner). However, if you cooperate on every move no matter what your partner did you will inevitably suffer “the suckers payoff.” Your partner will have no incentive to cooperate and you will be defeated almost instantly. In such a game cooperation is the best strategy only if betrayal is punished. I used the example of Prisoner’s dilemma because it can be viewed as a set of defining set of circumstances under which people behave well towards others. What Prisoner’s Dilemma presents us with is the notion of “enlightened selfishness” both on the personal and evolutionary level. Prisoner’s Dilemma shows that in the personal sense, selfishness is enlightened...if I cooperate with you, you will likely cooperate with me ([tit a tat strategy](#)) and we will both score “in the game of life” sort of speak. If we keep betraying each other, we will both be losers at the end. Another aspect of behavior in the personal sense comes from what makes people “feel good” (I talked about this in the Last section but its worth mentioning to see how it ties into the rest of the story). Lets take the case of what people call “unconditional love” of a mother. Can we say it is selfish...how could it be? We often see mother’s sacrificing their well being to the betterment of their child. Evolutionary theory may be used to account for this phenomenon.

The mother by sacrificing herself through whatever means, is helping her offspring who is younger and has better chances of producing more offsprings. However, we can't trace back this behavior to evolution alone. That is, an important observation, which may be made, is that

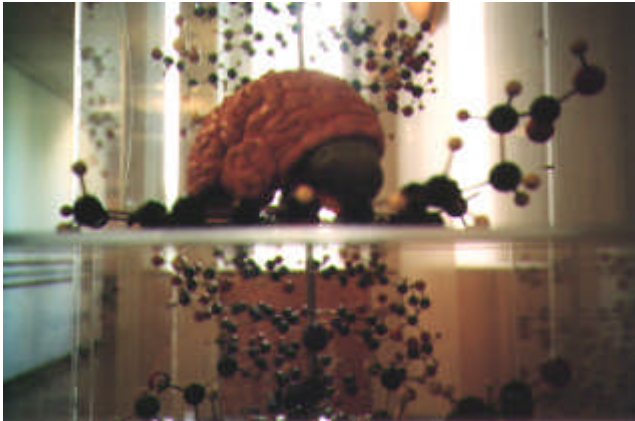


Photo by Rachel Berman

**THERE ARE LOT  
OF LEVELS OF  
ORGANIZATION  
BETWEEN  
EVOLUTIONARY  
PROCESS AND ITS  
EXPRESSION.**

The evolutionary process can generate behaviors, quos, etc, that can be experienced in the evolutionary process but whose meaning can be completely unhooked from its original biological motivation. Lets say that the evolutionary process produced a set of ques in females, say big breast, which at the time were a sign of a woman's ability to produce more milk for her babies (more kids they can produce and feed, the more genes will propagate, so guys *unconsciously* will want to mate with these females!) Lets now imagine that these females became sterile and the obsession for big breast had nothing to do with its original motivation. Taking from such observations we can say that:

**A BEHAVIOR WHICH THE EVOLUTIONARY PROCESS  
“NATURALLY SELECTED” FOR AND CAN BE EXPLAINED  
THROUGH DARWINIAN REASONS MAY COME TO SHARE  
NEW MOTIVATIONS AND LOSE ITS ORIGINAL  
MOTIVATION ENTIRELY.**

For instance, it is entirely possible that pleasurable sex originated because organisms that “felt good” having sex had more of it and thus passed on more genes. Human sex today serves entirely different role and in most cases is entirely unrelated to childbearing. To trace altruistic behaviors in humans to evolutionary history based entirely on Darwinian concepts of reproductive success does not grasp the phenomenon in its entirety. It is possible that throughout the course of evolution certain nervous systems bound tightly with others for reproductive success reasons. However, it should be kept in mind that altruism is a set of behavioral concepts that originated in the things we can study and use as objects of exploration. The Prisoner's Dilemma does precisely this. But what it fails to explain in the evolutionary sense is the question of why there are so many instances in which we seemingly act in ways in which we are bound to get the “the sucker's payoff.” Altruism can likely be a rewarding “feel good” behavior that has little to do with its original biological, perhaps “selfish” intention. Certain behaviors which give a greater chance of propagating our genes are likely to make us *feel good* so that people who *feel good* about such actions may have more offsprings. If a mother felt good about saving her kid, it is possible her brain is organized in a way that she feels good saving another kid who is not hers. We see heroic acts of a dozen of industrial workers who get overcome trying to rescue another in fumes or jumping in to save another's life. This can't be justified by cost-benefit analysis of Prisoner's dilemma. The implications of this are examined in the next section.

#### **LINKS ON GAME THEORY AND ALTRUISM**

#### **GAME THEORY**

[http://ecommerce.ncsu.edu/csc513/topic\\_GameTheory.html](http://ecommerce.ncsu.edu/csc513/topic_GameTheory.html)

The Prisoner's Dilemma in Relationships  
<http://www.spectacle.org/995/love.html>

ORIGINS OF VIRTUE  
[http://www.independent.org/tii/content/pubs/review/books/TIR31\\_Ridley.html](http://www.independent.org/tii/content/pubs/review/books/TIR31_Ridley.html)

PRISONER'S DILEMMA  
<http://www.spectacle.org/995/pd.html>

THE IDEA OF A SOCIAL CONTRACT GAME THEORY  
<http://www.wutsamada.com/alma/ethics/rachelsb.htm>

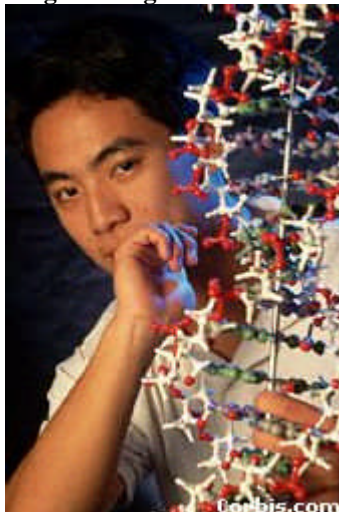
The Problem of Altruism  
<http://www.spectacle.org/297/alt.html>

**PART 4: GENES, ALTRUISM, AND EVOLUTION**  
Examining the “urge to love” in an evolutionary sense

*It's intriguing to me that when you study nature  
you learn that nature neither gives nor expects mercy.  
But human beings really do hold ourselves accountable  
in a way that other animals don't.*

*-David Templeton*

**Section 4: The “feel good” organizational structure of the brain**

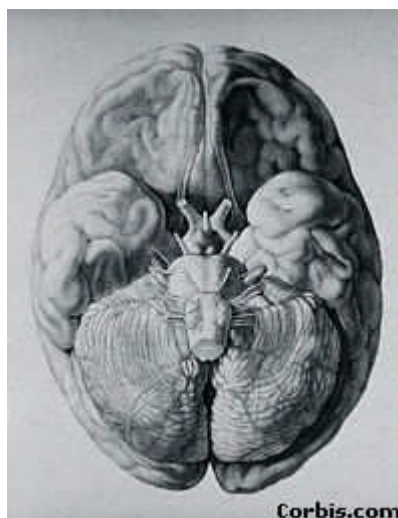


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In the **Selfish Gene** the notion of “suicidal altruism” in which one dies to save another is definitely a problem to Darwinian conception of reproduction. Hawkins writes "A gene for suicidally saving five cousins would not become more numerous in the population, but a gene for saving five brothers or ten first cousins would. The minimum requirement for a suicidal altruistic gene to be successful is that it should save more than two siblings (or children or parents), or more than four half-siblings (or uncles, aunts, nephews, nieces, grandparents, grandchildren) or more than eight first cousins, etc." There is no cost beneficial calculation that explains such behaviors. There must be something in ourselves that precedes conscious cost-analysis reason,

which makes some people jump in to save another. I am not saying that this is the case with all people. In fact, from now on I want to let go of the concept of universality of anything (I will expand my reasons for this in [Part 5](#))...what I am saying is that we can come up with enough observations to say that behaviors such as altruistic suicide in humans can not be sufficiently grasped through selfish motives. So what is that something within us? In previous parts, I already alluded to the influence of brain structure and genes on behavior. Thus, so far we can say that

**THE HUMAN BRAIN IS ORGANIZED IN SUCH A WAY THAT CERTAIN  
ALTRUISTIC BEHAVIORS MAKE US FEEL GOOD**



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However, we can not say nothing about the question of *why* it makes us feel good, unless we undertake the task of finding the mechanism of both the biological evolutionary reasons as well as cultural components which caused the changes in the brain. However on a more immediate level we can infer that :

**THE BRAIN IS ORGANIZED IN SUCH A WAY THAT “THE URGE TO LOVE” CAN  
BE EXPERIENCED WITHIN ITS STRUCTURAL MANIFESTATION**

The thing about this structure that is fascinating is its ability to *transcend* itself. In the next part I will explore this transcending phenomenon of the human brain in context of something we are all are familiar with – the fascinating world of dreams. I hope that after studding this “system” we can get a more complete picture about the organizational structure of the brain I alluded to above.

## **Part 5: The World of Dreams Reexamined**

### **INTRODUCTION**



"One Second Before Awakening from a Dream Caused by the Flight of a Bee Around a Pomegranate" by [Salvador Dali](#)

So far we saw that in addition to chemical models of various systems such as ecstasy and Depression, there is *something else*. This something else is often called the psychological. In the paper I wrote about dreams, I was quite proud of finding that the model based on genetic influence on dreams (Activation Synthesis Model), which I will shortly examine, was inadequate to grasp the phenomenon in its entirety. I noted that "Dreams embody a synthesis of the self that is manifested at the physiological, psychological, and "theoretical" level (this encompasses the brain making stuff up for itself...we should see that this is what happens during dreaming!). Although I used [Popparian](#) notion of interaction between the three levels of the self, I did not ground these in anything. I decided that the brain must be the *physical* and *something else* "the mental" and "theoretical." But where the heck that something else is to be found I had no clue. So I, by a rather common misconception, rooted the "psychological" and theoretical *outside* the brain. My mistake is largely caused by improper evaluation of the *morphology* of the brain.

I hope that the following account will help you (and me!) form a theory about the brain and its role in dreams which explains the pattern that has been building up based on our observations of various examined systems. In [Section 1](#), I provide the background necessary for evaluation of dreams, and in [Section 2](#), I present Freudian model of dreams. [Section 3](#) deals with the current model of dreams, as well as the various contradictions that point to the idea that there is *something else*. In [Section 4](#), we should revisit our observations about the dream state and find out what that something else might be!